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CITY & COUNTY OF SAN FRANCISCO

TREASURE ISLAND DEVELOPMENT AUTHORITY

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GAVIN NEWSOM, MAYOR
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**TREASURE ISLAND DEVELOPMENT AUTHORITY
SAN FRANCISCO PLANNING COMMISSION
SPECIAL JOINT MEETING AGENDA
May 5, 2005 11:00 A.M.**

Board of Supervisors Legislative Chambers, City Hall
1 Dr. Carlton B. Goodlett Place

Gavin Newsom, Mayor

DIRECTORS

Claudine Cheng, Chair
Susan Po-Rufino, Vice-Chair
Jared Blumenfeld
Jesse Blout

John Elberling
Matthew Franklin
Marcia Rosen
Supervisor Chris Daly (ex-officio)

Tony Hall, Executive Director
Peter Summerville, Commission Secretary

**JOINT PUBLIC HEARING BY THE TREASURE ISLAND DEVELOPMENT
AUTHORITY AND THE SAN FRANCISCO PLANNING COMMISSION TO CERTIFY
THE ENVIRONMENTAL IMPACT REPORT FOR THE TRANSFER AND REUSE OF
NAVAL STATION TREASURE ISLAND.**

ROLL CALL:

PLANNING: Commission President: Sue Lee
Commission Vice-President: Dwight S. Alexander
Commissioners: Michael J. Antonini; Shelley Bradford Bell; Kevin Hughes; William L. Lee; Christina Olague

**TREASURE
ISLAND:**

President: Claudine Cheng
Vice-President: Susan Po-Rufino
Members: Jared Blumenfeld; John Elberling; Jesse Blout;
Mathew Franklin; Marcia Rosen
Ex-Officio: Supervisor Chris Daly

A. GENERAL PUBLIC COMMENT

At this time, members of the public may address TIDA and the Planning Commission on items of interest to the public that are within the subject matter jurisdiction of TIDA and the Planning Commission except agenda items. With respect to agenda items, your opportunity to address TIDA and the Planning Commission will be afforded when the item is reached in the meeting. Each member of the public may address TIDA and the Planning Commission for up to three minutes.

B. PUBLIC COMMENT ON AGENDA ITEMS WHERE THE PUBLIC HEARING HAS BEEN CLOSED

At this time, members of the public who wish to address TIDA and the Planning Commission on agenda items that have already been reviewed in a public hearing at which members of the public were allowed to testify and the public hearing has been closed, must do so at this time. Each member of the public may address TIDA and the Planning Commission for up to three minutes.

C. SPECIAL CALENDAR

1. TRANSFER AND REUSE OF NAVAL STATION TREASURE ISLAND - Certification of the Environmental Impact Report (EIR) - The Environmental Impact Report analyzes the potential environmental impacts of the conveyance of former Naval Station Treasure Island (NSTI) from the U.S. Navy to the Treasure Island Development Authority (TIDA). NSTI includes both Yerba Buena Island and Treasure Island, and is located in Central San Francisco Bay, within the jurisdictional boundaries of the City and County of San Francisco. The EIR also analyzes, as a consequence of conveyance, three reuse alternatives based upon the Reuse Plan for NSTI (1996), which includes a variety of public oriented uses such as sports fields, a film production center, conference center, hotels, a themed attraction, educational and child care facilities, a fire fighter training school, public open space, and up to 2,800 housing units. The EIR also evaluates the expansion of the existing Clipper Cove Marina at a project-level. The Navy has published a separate Final Environmental Impact Statement evaluating the potential environmental effects of the disposal and reuse of NSTI to comply with Federal requirements.

Preliminary Recommendation: Certify Environmental Impact Review

NOTE: The public hearing on the Draft Environmental Impact Review is closed. The public comment period for the Draft Environmental Impact Report ended on October 21, 2003. TIDA and the Planning Commission do not conduct public review of Final Environmental Impact Reviews. Public comments on the certification may be presented to TIDA and the Planning Commission during the Public Comment portion of the TIDA - Planning Commission calendar.

ADJOURNMENT:

Pursuant to Government Code Section 65009, if you challenge, in court, (1) the adoption or amendment of a general plan, (2) the adoption or amendment of a zoning ordinance, (3) the adoption or amendment of any regulation attached to a specific plan, (4) the adoption, amendment or modification of a development agreement, or (5) the approval of a variance, conditional-use authorization, or any permit, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission, at, or prior to, the public hearing.

MEETING AGENDAS NOW AVAILABLE ON E-MAIL

If you would like to receive TIDA meeting agendas by e-mail, rather than through U.S. Postal Service mail, please send your name and e-mail address to TIDA@sfgov.org.

Disability Access

The Treasure Island Development Authority meets at City Hall, 1 Dr. Carlton Goodlett Place. City Hall is accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 at least 48 hours before a meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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TREASURE ISLAND WEBSITE

Check out the Treasure Island website at www.sfgov.org/treasureisland to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.

Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

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Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact Adele Destro, Interim Administrator, 1 Dr. Carlton B. Goodlett Place, Room 409, by phone at (415) 554-7724, by fax at (415) 554-7854 or by E-mail at sotf@sfgov.org.

Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, the San Francisco Library and on the City's website at www.sfgov.org/bdsupvrs/sunshine.

AGENDA ITEM
SPECIAL JOINT HEARING
of the
Treasure Island Development Authority
and the
San Francisco Planning Commission

City and County of San Francisco

Agenda Item No:

Meeting Date: May 5, 2005

Subject: Certification of the Environmental Impact Report for the Transfer and Reuse of Former Naval Station Treasure Island (Action Item)

Staff Contact: Rick Cooper, Major Environmental Analysis, 558-5974
Jack Sylvan, Mayor's Office of Base Reuse and Development, 554-5313

BACKGROUND

The transfer of former Naval Station Treasure Island (NSTI) from the Navy to TIDA requires two environmental evaluations: an Environmental Impact Statement (EIS) that complies with the requirements of the National Environmental Protection Act (NEPA), and an Environmental Impact Report (EIR) that complies with the requirements of the California Environmental Quality Act (CEQA). Initially, the City, acting through its Office of Major Environmental Analysis and the Treasure Island Development Authority (Authority), and the Navy decided to conduct a joint EIR/EIS document and jointly published an Initial Study/Notice of Preparation in 1996. Preparation of the Draft EIR/EIS later stalled when it became clear that the Navy was unwilling to address the City's concerns that the draft EIR/EIS would not comply with the requirements of CEQA. Based on this difference of approach, in 2001 the City initiated its own CEQA review, using much of the analysis and work that had been done for the joint document as the basis for the City's separate EIR.

The Draft EIR was published and distributed in late August 2003 and the public was given a 60-day period to review the Draft and submit comments on the adequacy of the document. A joint public hearing was held by the Planning Commission and TIDA Board on October 2, 2003 to accept public comment. Comments on the Draft EIR were extensive and technical in nature and, consequently, required a substantial amount of additional work, and more work than originally anticipated by the consultant, the City Attorney's Office and the Planning Department's Office of Major Environmental Analysis. This work included communicating and coordinating with the Navy and the Navy's environmental review team, which further delayed the process. The culmination of this work was provided in a Summary of Comments and Responses document, which was published and distributed on April 12, 2005.

The EIR scopes three development alternatives (in addition to a No Action alternative), each based on a variation of the reuse planning conducted for the base between 1993 and 1996,

which culminated in the 1996 Reuse Plan for former Naval Station Treasure Island. This EIR does not scope any future development plans based on any master developer proposals or project-specific plans. The current EIR supports two future actions:

1. The Program-level component of the EIR supports transfer of the property from the U.S. Navy to the City of San Francisco, acting by and through the Authority; and
2. The Project-specific marina component of the EIR supports expansion of the existing marina.

At the joint hearing on May 5, the Authority Board and the Planning Commission will be asked to consider approving a draft resolution affirming that the Draft EIR and Summary of Comments and Responses documents provide adequate CEQA review of the proposed project and to certifying the EIR as complete and adequate. During the hearing the Authority Board and Planning Commissioners will have the opportunity to ask questions regarding the EIR. The public will have an opportunity to provide public comment on the certification of the Final EIR during the public comment period immediately preceding the certification item on the joint agenda. Once the EIR has been certified, the Draft EIR and Summary of Comments and Responses documents will together be considered the Final EIR and will be bound together into a complete and corrected document. As indicated in the approval resolution before the Authority and the motion before the Planning Commission and in the Summary of Comments and Responses, preparation of a new EIR is anticipated for any specific development proposal for the long-term reuse of NSTL.

Attached to this staff summary are the following: an agenda for the joint hearing; a general memorandum from the San Francisco Planning Department Environmental Review Officer with information regarding the Draft EIR and joint hearing; a draft Resolution for the Authority to consider, which, if approved, certifies the EIR as complete and final; and, an errata sheet which provides some additional changes to the EIR which were found by the Planning Department to be necessary following publication of the Comments and Responses document.

RECOMMENDATION

Certification of the EIR is an essential step in obtaining conveyance of the property from the U.S. Navy. Additionally, the EIR supports an important early phase of redevelopment via expansion of the existing marina. Staff believes that this EIR document satisfies the requirements of CEQA for each of these actions. Staff recommends approval of the resolution.

EXHIBITS

- A Memorandum from Environmental Review Officer
Resolution No. ____ Adopting Findings Related to the Certification of a Final
Environmental Impact Report
Errata Sheet for Comments and Responses Document



PLANNING DEPARTMENT

City and County of San Francisco • 1660 Mission Street, Suite 500 • San Francisco, California • 94103-2414

MAIN NUMBER
(415) 558-6378

DIRECTOR'S OFFICE
PHONE: 558-6411
4TH FLOOR
FAX: 558-6426

ZONING ADMINISTRATOR
PHONE: 558-6350
5TH FLOOR
FAX: 558-6409

PLANNING INFORMATION
PHONE: 558-6377
MAJOR ENVIRONMENTAL
FAX: 558-5991

COMMISSION CALENDAR
INFO: 558-6422
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DATE: April 27, 2005

TO: San Francisco Planning Commissioners and
Treasure Island Development Authority Board members

FROM: Paul Maltzer, Environmental Review Officer

SUBJECT: Certification of the Final Environmental Impact Report for the
Transfer and Reuse of Naval Station Treasure Island
Planning Department File No. 94.448E

The Environmental Impact Report (EIR) for the Transfer and Reuse of Naval Station Treasure Island consists of the Comments and Responses document and the Draft EIR. Both of these documents were sent to you previously, and will be presented for certification at a special joint meeting of the San Francisco Planning Commission and the Treasure Island Development Authority. The meeting is scheduled for Thursday, May 5, 2005 at 11:00 AM. and will take place in the Legislative Chamber, Second Floor, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco.

Attached you will find two additional documents for your consideration: 1) a draft certification motion for the Planning Commission and TIDA to consider which, if approved, certifies the EIR as complete and final; and 2) an errata sheet which provides some additional changes to the EIR which were found to be necessary following publication of the Comments and Responses document. These changes, along with the two documents described above, would constitute the Final EIR, which is being presented for your certification.

If you have any questions, please call Rick Cooper, Senior Planner at (415) 558-5974.

RESOLUTION NO.

[Certifying Final Environmental Impact Report for Transfer of Naval Station Treasure Island from the U.S. Navy to the Treasure Island Development Authority.]

Resolution adopting findings related to the certification of a Final Environmental Impact Report for a proposed transfer of title from the US Navy to the Treasure Island Development Authority and reuse of Naval Station Treasure Island, consisting of approximately one thousand upland and submerged acres of Treasure Island and Yerba Buena Island, located in San Francisco Bay, and expansion of the marina on Treasure Island.

WHEREAS, Former Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America (the "Navy"); and,

WHEREAS, The Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, The conveyance and redevelopment of the Base requires environmental review under the National Environmental Protection Act (NEPA) resulting in an Environmental

1 Impact Statement (EIS) and review under the California Environmental Quality Act resulting in
2 an Environmental Impact Report; and,

3 WHEREAS, The Authority, in conjunction with City Planning staff, determined that it is
4 in the Authority's best interest to complete an Environmental Impact Report independent of
5 the Navy's EIS; and,

6 WHEREAS, The Authority and City Planning staff have been working together in
7 preparing the Final Environmental Impact Report for the proposed transfer of the Base from
8 the Navy to the Authority, a copy of which is on file with the Authority Secretary at the
9 Authority's offices at 410 Palm Avenue, Bldg. One, Treasure Island, San Francisco, California,
10 and which is hereby declared to be a part of this resolution as if set forth fully herein; now,
11 therefore, be it

12 RESOLVED, That the Authority hereby CERTIFIES the Final Environmental Impact
13 Report identified as Case file No. 94.448E, Transfer and Reuse of Naval Station Treasure
14 Island, (hereinafter "Project") based upon the following findings:

15 1) The City and County of San Francisco, acting through the Planning Department
16 (hereinafter "Department") fulfilled all procedural requirements of the California
17 Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter
18 "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 et
19 seq., (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco
20 Administrative Code (hereinafter "Chapter 31").

21 a. The Department determined that an Environmental Impact Report
22 (hereinafter "EIR") was required and provided public notice of that determination by
23 publication in a newspaper of general circulation on September 27, 1996.

1 b. On August 23, 2003, the Department published the Draft Environmental
2 Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of
3 general circulation of the availability of the DEIR for public review and comment and of
4 the date and time of the Planning Commission public hearing on the DEIR; this notice
5 was mailed to the Department's list of persons requesting such notice.

6 c. Notices of availability of the DEIR and of the date and time of the public
7 hearing were posted near the project site by Department staff on August 23, 2003.

8 d. On August 23, 2003, copies of the DEIR were mailed or otherwise
9 delivered to a list of persons requesting it, to those noted on the distribution list in the
10 DEIR, to adjacent property owners, and to government agencies, the latter both directly
11 and through the State Clearinghouse.

12 e. Notice of Completion was filed with the State Secretary of Resources via
13 the State Clearinghouse on August 23, 2003.

14 2) Authority and the Commission held a duly advertised joint public hearing on said
15 Draft Environmental Impact Report on October 2, 2003 at which opportunity for public
16 comment was given, and public comment was received on the DEIR. The period for
17 acceptance of written comments ended on October 21, 2003.

18 3) The Department prepared responses to comments on environmental issues
19 received at the public hearing and in writing during the 60-day public review period for
20 the DEIR, prepared revisions to the text of the DEIR in response to comments received
21 or based on additional information that became available during the public review
22 period, and corrected errors in the DEIR. This material was presented in a "Comments
23 and Responses" document, published on April 12, 2005, was distributed to the
24
25

Commission and to all parties who commented on the DEIR, and was available to others upon request at Department offices.

4) A Final Environmental Impact Report has been prepared by the Department, consisting of the Draft Environmental Impact Report, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses all as required by law.

5) Project Environmental Impact Report files have been made available for review by the Authority, the Commission, and the public. These files are available for public review at the Department offices at 1660 Mission Street, and are part of the record before Authority and the Commission. The Planning Department is the custodian of records.

6) On May 5, 2005, Authority and the Commission jointly reviewed and considered the Final Environmental Impact Report, and the Authority hereby finds that the contents of said report and the procedures through which the Final Environmental Impact Report was prepared, publicized and reviewed comply with the provisions of CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code.

7) The project sponsor has indicated that the presently preferred alternative is the Maximum Development Alternative, described in the Final Environmental Impact Report.

8) The EIR is both a Program EIR for the transfer of portions of the former Base from the U.S. Navy to the City, as well as a Project EIR for expansion of a marina on Treasure Island as described in the EIR.

9) Authority and the Commission anticipate that on-going negotiations for long term reuse of the Base will result in a long term reuse plan that will be reviewed and revised

over time by the Authority and the developer, with substantial public input. Because of the possible changes in the plan for the long term reuse of the Base, the Authority and the Commission expect that a new EIR will be prepared for such long term reuse plan. The Authority and the Commission do not intend to tier subsequent CEQA review of decisions for the long term reuse of the Base, as described on Responses to Comments pages 5-14 through 5-16, from this Program EIR. This intent should not preclude the Planning Department or Authority staff from using information contained in this Program EIR in subsequent independent environmental documents.

10) The Department has suggested minor modifications to the Staff-Initiated Text Changes at Responses to Comments pages 5-2, 5-3, 5-12, 5-14, 5-19 and 5-75 to reflect the above finding regarding long term reuse plans for the Base. The Authority hereby incorporates these changes in the Final EIR.

FURTHER RESOLVED, That the Authority hereby finds that the Final Environmental Impact Report concerning File No. 94.448E, Transfer and Reuse of Naval Station Treasure Island, reflects the independent judgment and analysis of the Authority, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said Final Environmental Impact Report in compliance with CEQA and the CEQA Guidelines.

FURTHER RESOLVED, That the Authority, in certifying the completion of said Final Environmental Impact Report, hereby does find that the project preferred by the project sponsor, described as the Maximum Development Alternative in the Final Environmental Impact Report:

- a. Will have project-specific significant unavoidable effects on the environment by:
 - 1) significant direct traffic impacts on the Yerba Buena Island westbound on-

1 ramp and the eastbound off-ramp on the west side of Yerba Buena Island; and
2 2) significant transportation-related impacts on air quality.

- 3 b. Will have significant unavoidable effects on the environment in that it will: 1)
4 have a considerable contribution to cumulative traffic increases on the San
5 Francisco-Oakland Bay Bridge; 2) contribute considerably to cumulative traffic
6 congestion and increased parking demand at East Bay ferry terminals; and 3)
7 have a considerable contribution to cumulative air quality impacts due to
8 increased transportation-related pollutant emissions.

9 FURTHER RESOLVED, That the Authority, in certifying the completion of said Final
10 Environmental Impact Report, hereby does find that the proposed Marina project, described in
11 the Maximum Development Marina Alternative in the Final Environmental Impact Report:

- 12 a. Will have a project-specific significant unavoidable impact on transportation-
13 related air pollution caused by personal vehicle emissions of ozone precursors
14 and PM10 emissions.
- 15 b. Will have a significant unavoidable effect on the environment in that it will have a
16 considerable contribution to cumulative air quality impacts due to increased
17 transportation-related pollutant emissions.

18 CERTIFICATE OF SECRETARY

19 I hereby certify that I am the duly elected and acting Secretary of the Treasure
20 Island Development Authority, a California nonprofit public benefit corporation, and
21 that the above Resolution was duly adopted and approved by the Board of Directors
22 of the Authority at a properly noticed meeting on May 5, 2005.

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Susan Po-Rufino,
Secretary

Errata
Transfer and Reuse of Naval Station Treasure Island
April 12, 2005 Comments and Responses Document

These errata present additions and deletions to the Comments and Responses (“C&R”) document. Text added to the C&R document is underlined and text deleted from the C&R document is shown with ~~striketrough~~.

These text changes and additions do not present any new information that would alter the conclusions presented in the Draft EIR. Consequently, the text changes presented below do not trigger the need to recirculate the Draft EIR pursuant to the California Environmental Quality Act.

Staff-Initiated Text Changes,
Section 5 of the Comments and Responses Document

Page 5-2 (end of 3rd paragraph)

Page 5-3 (end of 2nd full paragraph with changes to Page ES-25 of EIR)

Page 5-12 (end of first full paragraph)

Page 5-14 (at the very bottom of the page)

Page 5-19 (middle of the page, second bullet)

Page 5-75 (middle of the page, fourth bullet):

Add the following language on each of the above-referenced pages:

“Because of possible changes in the plans for the long term reuse of NSTI, it is expected that a new EIR will be prepared for such long term reuse plan prior to approval of any long term reuse plan for NSTI, and that subsequent environmental review of the approvals required for the long term reuse of NSTI would not be tiered from this EIR.”

Page 5-150 (beginning with the first full sentence, eight lines from the bottom) the following language is deleted, as shown:

~~“The marina’s contribution to cumulative traffic congestion and increased parking demand at ferry terminals is currently not known with certainty and this analysis therefore concludes, as does the cumulative impact analysis for the reuse alternatives, that the impact is significant and unavoidable. The marina’s contribution to significant impacts could therefore be cumulatively considerable as well.”~~



TREASURE ISLAND DEVELOPMENT AUTHORITY

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Draft Minutes of Joint Meeting
Treasure Island Development Authority
San Francisco Planning Commission
May 5, 2005

Board of Supervisors Legislative Chambers
City Hall, 1 Carlton B. Goodlett Place
San Francisco, CA

Call to order: 11:22 AM

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Roll Call: Treasure Island Development Authority
Present: Claudine Cheng (Chair)
Susan Po-Rufino (Vice-Chair)
Jared Blumenfeld
John Elberling
Matthew Franklin
Marcia Rosen

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Excused: Jesse Blout
Supervisor Chris Daly

Roll Call: San Francisco Planning Commission
Present: Sue Lee (President)
Dwight Alexander (Vice President)
Michael Antonini
William Lee
Kevin Hughes
Shelley Bradford-Bell

Excused: Christina Olague

Public Comment:

Mr. Stephen Krabiell, Executive Director of Toolworks, encouraged the joint bodies to pass the EIR

Mr. David Kremer, San Francisco Little League, supported the approval of the draft EIR

Mr. Peter Thorner, San Francisco Board Sailing Association, stated that he supports the approval of the draft EIR, and stated that Treasure Island is a great place to windsurf.

Ms. Ruth Gravanis stated that she does not have a problem with the programmatic EIR being approved. Stated that she is disappointed that the marina EIR does not discuss recycling facilities, safeguarding against spills as well as enforcement of eelgrass beds. Would like to see a public launching facility for kayaks and canoes in Clipper Cove. Stated she is concerned with the proposed removal of the habitat for the black crown night herrings, which are the pine trees between Building 1 and the Crossroads Café.

Mr. Ian Lewis, UNITE-HERE Local 2, stated that this project is a terrific advantage to bring quality jobs to Treasure Island and that the developers have gone out of their way to assure quality jobs.

Ms. Sherry Williams, Treasure Island Homeless Development Initiative, urged the Board to approve the EIR. Stated that ample time has been given to vet concerns and TIHDI is very much in favor of the project going forward. The quicker these decisions are made the better it will be for current residents.

Ms. Eve Bach, ARC Ecology, stated the EIR document still has many flaws in programmatic analysis. If the joint body adopts changes proposed by staff, it will assure that this document will not be used as a platform for tiering subsequent environmental analysis ARC Ecology will not have to appeal this adoption. Stated she hopes a new independent EIR will address the traffic and other issues with more seriousness than is done in this document.

Mr. Eugene Brodsky, member of the TI/YBI Citizen Advisory Board, stated that he supports the adoption of the EIR should the proposed changes be made. Stated that there is significant danger to the Island and community due to inadequate emergency planning, especially if there is a collapse of the causeway.

Mr. Jim Salinas, San Francisco Building and Construction Trades Council, stated his support for the adoption of the EIR. This is an effort that will greatly benefit the City and County of San Francisco.

Ms. Carissa Harris, San Francisco Sailing Center Foundation, stated she urges the Board to adopt the EIR. Feels that accepting the EIR helps move many of the projects on the Island forward.

At this point Public Comment was closed

Executive Director Tony Hall stated that staff has heard public comment and made responses to the draft EIR published in August 2003 and in a joint hearing in October 2003. The culmination of analysis and review in front of the Boards today in the form of the Draft EIR and Comments and Responses to the draft EIR document. This document is the basis and structure that supports redevelopment and conveyance of Treasure and Yerba Buena Islands.

Mr. Jack Sylvan, Mayor's Office of Base Reuse and Development, provided background on the base closure process and planning process surrounding former Naval Station Treasure Island. Mr. Rick Cooper, San Francisco Planning Department, provided background on the nature of the EIR document as well background on revisions made to the original document as noted in the revised errata sheet. Stated staff anticipates a long term reuse plan will be devised along with substantial public input. A subsequential EIR is anticipated to be produced as well. Reiterated that the EIR provides proper environmental review by CEQA. Believes the issues raised by speakers are addressed in this document. Stated that other measures are planned to deal with the issues raised by a speaker regarding the night herons. Requested the Boards adopt the motion before them.

Director Rosen thanked staff for work on comments and responses and thanked the public for their thoughtful written comments. These comments have lead to a much better and informative document.

Director Blumenfeld asked if the Navy is on a parallel process in their NEPA work
Mr. Michael Cohen, Mayor's Office of Base Reuse and Development, stated that originally TIDA tried to do a joint EIR/EIS document. The Navy has completed the NEPA documentation already.

Director Blumenfeld requested that the NEPA documentation be placed on the TIDA website.

Director Rosen motioned for certification of the document by the TIDA Board

Director Cheng seconded the motion

The motion was passed by the TIDA Board by a vote of 6 aye, 0 no

Commissioner Bradford-Bell motioned for certification of the EIR by the Planning Commission

Commissioner Lee seconded the motion

The motion was passed by the Planning Commission by a vote of 6 aye, 0 no

The meeting adjourned at 11:45 AM

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**TREASURE ISLAND DEVELOPMENT AUTHORITY
MEETING AGENDA**
May 11, 2005 1:30 P.M.

Room 400, City Hall
1 Dr. Carlton B. Goodlett Place

Gavin Newsom, Mayor

DIRECTORS

Claudine Cheng, Chair
Susan Po-Rufino, Vice-Chair
Jesse Blout
Jared Blumenfeld

John Elberling
Matthew Franklin
Marcia Rosen
Supervisor Chris Daly (*ex-officio*)

Tony Hall, Executive Director
Peter Summerville, Commission Secretary

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ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Report by the Executive Director (*Discussion Item*)
 - Public use, events and activities on Treasure Island
 - Commercial leasing
 - Bay Bridge/Caltrans/State issues
 - Treasure Island community news and issues
 - Legislative issues
 - Financial/Budget
 - Status of negotiations with U.S. Navy
 - Status of master development planning process
 - Requests for information by Directors
3. Report by Mayor's Office of Base Reuse and Development (*Discussion Item*)

4. Communications (*Discussion Item*)
 5. Report by the Treasure Island/Yerba Buena Island Citizen's Advisory Board (*Discussion Item*)
 6. Ongoing Business by Directors (*Discussion Item*)
 7. General Public Comment (*Discussion Item*) ***In addition to General Public Comment (Item #7), Public Comment will be held during each item on the agenda.***
-

8. **CONSENT AGENDA**

All matters listed hereunder constitute a Consent Agenda, are considered to be routine by the Treasure Island Development Authority Board and will be acted upon by a single vote of the Authority Board. There will be no separate discussion of these items unless a member of the Authority Board so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.

- a.) Approval of Minutes of April 13, 2005 Meeting (*Action Item*)
 - b.) Authorizing the Executive Director to Execute a Loan Agreement with the Government of Mexico and the Fine Arts Museums of San Francisco for the Temporary Loan to Mexico of the Miguel Covarrubias Murals "Pageant of the Pacific" (*Action Item*)
 - c.) Authorizing an Amendment to the South Waterfront Master Lease between the Authority and the Navy to Add Additional Land to the Premises, Consisting of Approximately 3.73 acres, Known as the Lot Bounded by 3rd and 4th Streets and I and H Avenues (*Action Item*)
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9. Resolution Establishing an Ad Hoc Nominating Committee, Consisting of Three Members of the Treasure Island Development Authority Board of Directors Appointed By the President, to Nominate Members of the Board of Directors to Serve as Officers of the Treasure Island Development Authority In Accordance with the Treasure Island Development Authority Bylaws (*Action Item*)
 10. Discussion and Review of the 2005 Financial Audit of the Treasure Island Development Authority Performed by Harvey M. Rose Accountancy Corporation (*Discussion Item*)
 11. Approving the Budget of the Treasure Island Development Authority for Fiscal Year 2005-2006, and Authorizing the Executive Director to Submit the Proposed Budget to the Mayor of the City and County of San Francisco for Further Review and Inclusion in the City's FY2005-2006 Budget (*Action Item*)

12. Resolution Reaffirming the Authority's Intent to Address the Transition to Employment of the Authority's Own Staff (*Action Item*)
13. Authorizing the Executive Director to Negotiate and Execute a New Agency Agreement with the San Francisco Redevelopment Agency for the Provision of Staff Services to the Treasure Island Development Authority for a 12 month Period in Substantially the Form of the Existing Agency Agreement for an Annual Administrative Fee Not to exceed \$189,000 (*Action Item*)
14. Resolution Authorizing the Executive Director to Issue a Request for Proposals From Local Government Services Organizations for the Provision of Staff Services to the Treasure Island Development Authority (*Action Item*)
15. Resolution Authorizing the Executive Director of the Treasure Island Development Authority to Take All Actions Necessary to (1) Establish the Authority as the Employer of Record of all Authority Staff, (2) Negotiate a Short-Term Extension of the Agency Agreement with the San Francisco Redevelopment Agency on a Month-to-Month Basis Not to Exceed Six Months, (3) Issue an RFP for Payroll and Administrative Benefits Functions to an Administrative Services Organization, and (4) Effectuate a Roll-over of Existing Authority Staff from the San Francisco Redevelopment Agency to Direct Employment at the Authority (*Action Item*)
16. Discussion of Future Agenda Items by Directors (*Discussion Item*)
17. Adjourn

Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Development Authority Office, 410 Avenue of the Palms, Building 1, Treasure Island, and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.

Disability Access

The Treasure Island Development Authority holds its regular meetings at San Francisco City Hall. City Hall is accessible to persons using wheelchairs and others with disabilities. Assistive listening devices are available upon request. Agendas are available in large print. Materials in alternative formats and/or American Sign Language interpreters will be made available upon request. Please make your request for alternative format or other accommodations to the Mayor's Office on Disability 554-6789 (V), 554 6799 (TTY) at least 72 hours prior to the meeting to help ensure availability.

The nearest accessible BART station is Civic Center Plaza at the intersection of Market, Grove, and Hyde Streets. The accessible MUNI Metro lines are the J, K, L, M, and N (Civic Center Station or Van Ness Avenue Station). MUNI bus lines serving the area are the 47 Van Ness, 9 San Bruno, and the 6, 7, 71 Haight/ Noriega. Accessible curbside parking is available on 1 Dr. Carlton B. Goodlett Place and Grove Street. For more information about MUNI accessible services, call 923-6142.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees

may be sensitive to various chemical based scented products. Please help the City to accommodate these individuals.

The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at soff@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

Notes

May 4, 2005

Board of Directors Treasure Island Development Authority
c/o Honorable Claudine Cheng, President
410 Avenue of Palms
Treasure Island
San Francisco, CA 94130

San Francisco Planning Commission
c/o Honorable Susan Lee, President
San Francisco Planning department
1660 Mission Street, Suite 500
San Francisco, CA 94103-2414



Re: Transfer and Reuse of Naval Station Treasure Island – Draft
Environmental Impact Report, Comments and Responses

Dear Members of the Treasure Island Development Authority and San Francisco Planning Commission:

On April 28, 2005, in our capacities as members of the Policy Committee of the San Francisco Commission on the Environment, we received an update and review of the Draft Treasure Island Sustainability Plan from Department of the Environment Staff. We were excited by the contents of the Plan and are hopeful that Treasure Island will become a model for comprehensive and real long-term sustainable development for the entire world to learn from and admire.

We understand that your two commissions expect to certify the above-captioned Environmental Impact Report (EIR) next week. We are concerned about the relationship between that document and not only the Draft Sustainability Plan but also the forthcoming Draft Transportation and Revised Land Use Plans. Accordingly, we believe that a new EIR for a new long term reuse plan should be developed later in the process and that subsequent California Environmental Quality Act review of proposed decisions regarding long-term development at Treasure Island should not be tied to this EIR. We urge you to make these commitments part of your certification document.

Please put us on your mailing list to receive notice of preparation of forthcoming environmental documents as well as information about your forthcoming plans. We are anxious to do what we can to help you create a plan for, and a community at, Treasure Island that will be a source of pride for decades to come.

Sincerely,

Johanna H. Wald
Member

San Francisco Commission on the
Environment*

Arlene Rodriguez
Member

San Francisco Commission on the
Environment*

* For identification purposes only





**Federal Planning Division
of the
American Planning Association**



April 7, 2005

Mr. Tony Hall
Executive Director
Treasure Island Development Authority
410 Avenue of Palms
Building 1, 2nd Floor
San Francisco, CA 94130



Dear Mr. Hall:

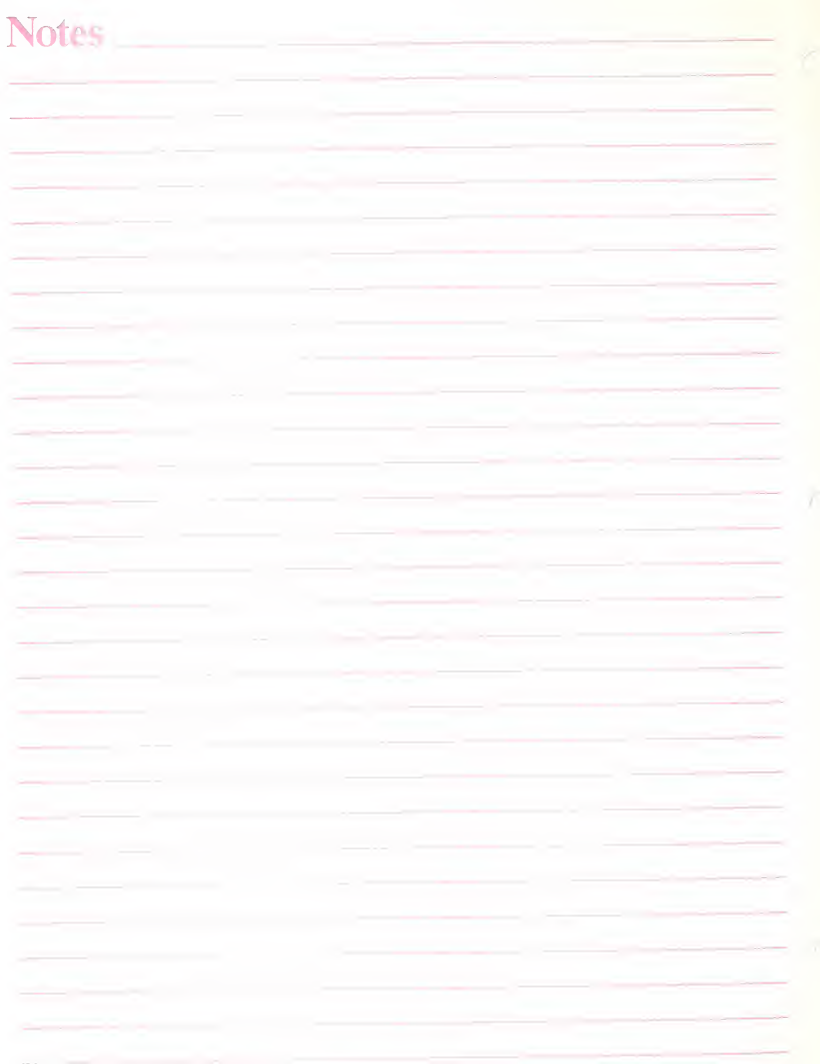
On behalf of the Federal Planning Division (FPD) of the American Planning Association (APA), I would like to thank you for taking time from your very busy schedule to be our keynote speaker at the Federal Planning Division Workshop Awards Luncheon on March 18. As a former planner for the U.S. Navy, I had worked on some planning projects at Treasure Island, and you rekindled some fond memories. I am eager to see how your efforts evolve. Speaking for all of our members, your talk gave us insight into the challenges local agencies face as they try to redevelop closed federal properties. As we prepare to help the administration transform and rationalize our federal infrastructure, we must endeavor to work with other agencies to achieve a mutually beneficial outcome.

I attended a portion of the APA conference, and Base Realignment and Closure topics were of interest to many attendees. Therefore, I would also like to express my appreciation for your involvement in producing a great conference.

Again, thanks for making the FPD Workshop a success. I look forward to seeing your planning efforts presented at future FPD or APA conferences.

Sincerely,

Jane Brattain, AICP
Chair, Federal Planning Division



Notes

Notes

TREASURE ISLAND DEVELOPMENT AUTHORITY
City and County of San Francisco

Agenda Item No. 8(b)

May 11, 2005

Subject: Authorizing the Executive Director to Execute a Loan Agreement with the Government of Mexico and the Fine Arts Museums of San Francisco for the Temporary Loan to Mexico of the Miguel Covarrubias Murals "Pageant of the Pacific"

Staff Contact: Peter Summerville
(415) 274-0660

SUMMARY OF PROPOSED ACTION

Staff requests authorization to enter into a loan agreement whereby TIDA would loan the five Covarrubias murals to the Government of Mexico for public display throughout Mexico and in exchange Mexico will conserve and restore the murals in accordance with recommendations made by the Arts Commission.

DISCUSSION

In March of 2001, the Authority accepted five murals by renowned Mexican national muralist Miguel Covarrubias as a gift from the Port of San Francisco (Authority Resolution 01-50-3/29). Prior to being transferred to TIDA, the murals hung at the World Trade Club inside the Ferry Building in San Francisco. The major renovation of the Ferry Building in 2001 did not envision an appropriate location for continued display of the murals once the building was re-opened. At the instigation of former TIDA Executive Director Annemarie Conroy, TIDA and the Port entered into an agreement whereby TIDA received the murals from the Port with the purpose of facilitating the eventual long-term public display of the murals on Treasure Island. The five murals are comprised of 44 individual panels and collectively named "The Pageant of the Pacific". Covarrubias painted the murals by commission for display in the Pacific House at the 1939-1940 Golden Gate International Exposition held on Treasure Island. Upon transfer from the Port in 2001, the murals were properly packaged and put in storage within a climate controlled building on Treasure Island where they still reside.

In August of 2004, the Authority was approached by the Mexican Consulate in San Francisco with a proposal which would allow Mexico to borrow the murals for public display in Mexico in exchange for the Mexican Ministry of Culture performing the professional restoration and conservation work needed on the murals prior to long term public display on Treasure Island as well as paying all costs associated with the display, insuring, shipping and handling and security of the murals while in Mexico. Mexico and the City of San Francisco have a well-developed history of cultural exchange, especially in the realm of fine art and artifacts. Though Covarrubias is one of Mexico's best known muralists, the "Pageant of the Pacific" has never been displayed in Mexico.

At the same time these discussions were beginning, the Fine Arts Museum of San Francisco was approached separately by a trustee of the Charles D. and Frances K. Field Fund (a brief background of the Field Fund is attached as Exhibit B) who expressed an interest in making a Field Fund grant, through the Fine Arts Museum, towards the restoration of the Covarrubias murals. This trustee was an attendee of the 1939-1940 GGIE and is a lifelong fan of Covarrubias. The Field Fund Grant is earmarked for costs

associated with the restoration and conservation of the murals and their shipment between Treasure Island and Mexico and back.

Guiding the restoration process will be the "Examination Report and Conservation Recommendation" of the murals written in 2000 by conservationist Anne Rosenthal at the request of the San Francisco Arts Commission. At the beginning of this process in August of 2004 the murals, though property of TIDA, were still under the jurisdiction of the San Francisco Arts Commission. Discussions between Arts Commission staff, TIDA staff, and the Office of the City Attorney concluded that the murals should become the sole property of TIDA, and at the January 19, 2005 meeting of the Visual Arts Committee and the February 7, 2005 meeting of the full Commission, the Commission voted unanimously to deaccession the murals from the Civic Arts Collection and also voted unanimously to endorse the proposed exhibition and restoration agreement (Arts Commission Resolution 0207-05-016).

The loan agreement before the Authority reflects the collaborative effort between TIDA, the Government of Mexico and the Fine Arts Museum of San Francisco. Terms reached reflect that there will be no expenditures by TIDA as part of this project. The major points of importance in this proposed agreement are:

Restoration:

Mexico, acting through its National Center for Conservation of the National Patrimony, will perform necessary restoration and conservation work on the mural panels based on the recommendations set forth in the Anne Rosenthal report "Examination Report and Conservation Recommendations" commissioned in 2000 by the San Francisco Arts Commission. The restoration and conservation will be led by Mr. Walther Boelstery, Director of the National Center and will be performed in cooperation with Carl Grimm, PhD, Head Paintings Conservator for the Fine Arts Museum. The cost of restoration and conservation will be reimbursed to Mexico by the Fine Arts Museums using the grant money provided them by the Field Fund. Restoration is anticipated to take approximately 6 months to complete.

Display, Shipping, Handling in Mexico:

After the restoration and conservation is completed, the Government of Mexico and the Mexican Ministry of Culture plan to publicly display the murals at venues in the Mexican cities of Mexico City, Monterrey, and Guadalajara. Mexico will pay for all costs associated with installation and display of the murals, security, insurance and shipping and handling of the murals within Mexico. The Fine Arts Museum will pay for shipping of the murals from the Authority to Mexico and back to the Authority through the Field Fund grant money. The period of public display throughout the three cities is anticipated to run from November 2005 through September 2006. At that point the murals will be shipped back to Treasure Island for storage.

A separate issue surrounding the "Pageant of the Pacific" murals but not directly related to the action before the Board today is the status of the sixth mural in the set: "Art Forms of the Pacific Area". This mural, consisting of 12 panels, hung at the Pacific House during the GGIE, however this it's current whereabouts are unknown and it's history is best described as murky. A review of the Arts Commission files on the murals reveals that "Art Forms of the Pacific Area" never hung at the Ferry Building and, in fact, quite possibly never returned from the East Coast when the murals were sent there shortly after the GGIE for a proposed exhibit at the Natural History Museum in New York City that

never materialized. TIDA staff, with cooperation from the Arts Commission and Port of San Francisco staff, continues to investigate the history of this "missing mural" with the hope to one day locate and acquire the mural as to complete the full "Pageant of the Pacific" suite.

RECOMMENDATION

Staff recommends approval of loan agreement.

EXHIBITS

- A** Loan Agreement between TIDA, the Government of Mexico and the Fine Arts Museums of San Francisco
- B** Background on the Charles D. and Frances K. Field Fund

[Loaning the Miguel Covarrubias Murals to the Government of Mexico]

Authorizing the Executive Director to Execute a Loan Agreement with the Government of Mexico and the Fine Arts Museums of San Francisco for the Temporary Loan to Mexico of the Miguel Covarrubias Murals "Pageant of the Pacific".

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over former Naval Station Treasure Island (the "Base"), and (ii), with respect to those portions of the Base which are subject to the public trust for commerce, navigation and fisheries, (the "Tidelands Trust"), vested in the Authority the authority to administer the Tidelands Trust as to such property; and,

WHEREAS, The Tidelands Trust prohibits the sale of Tidelands Trust property into private ownership, generally requires that Tideland Trust property be accessible to the public and encourages public oriented uses of trust property that among other things, attract people to the waterfront, promote public recreation, protect habitat and preserve open space; and,

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated February 6, 1998; and,

1 **WHEREAS**, On March 29, 2001 the Authority approved a resolution accepting as a
2 gift from the Port of San Francisco five Miguel Covarrubias murals collectively titled
3 "Pageant of the Pacific" (the "Murals"); and,

4 **WHEREAS**, The Government of Mexico has requested that the Authority loan the
5 Murals to Mexico for the purpose of conserving, restoring and publicly displaying the Murals
6 in Mexico for a period of approximately two years and is committed to cover all costs
7 related to the transportation, insurance, handling and display of the Murals within Mexico;
8 and,
9

10 **WHEREAS**, The Fine Arts Museum of San Francisco has received and will
11 administer grant money earmarked for transporting the Murals to and from Mexico and for
12 funding the restoration and conservation of the Murals in Mexico with the conservation and
13 restoration work to be performed by the Government of Mexico in collaboration with the
14 Fine Arts Museum of San Francisco; and,
15

16 **WHEREAS**, The restoration and conservation of the Murals is necessary prior to any
17 long-term display on Treasure Island and will be performed in accordance with the
18 conservation recommendations for the Murals previously set forth by the San Francisco
19 Arts Commission; and,
20

21 **WHEREAS**, The Government of Mexico will display the Murals publicly in three
22 locations throughout the country of Mexico in order to provide to the citizens of Mexico the
23 ability to publicly view and enjoy the Murals; now therefore be it
24

1 **RESOLVED**, That the Authority hereby authorizes the Executive Director to execute
2 a Loan Agreement in substantially the form attached hereto as Exhibit A with the
3 Government of Mexico and the Fine Arts Museums of San Francisco for Temporary Loan
4 to Mexico of the Miguel Covarrubias Murals "Pageant of the Pacific".

5
6
7 **CERTIFICATE OF SECRETARY**

8 I hereby certify that I am the duly elected and acting Secretary of the
9 Treasure Island Development Authority, a California nonprofit public benefit
10 corporation, and that the above Resolution was duly adopted and approved by the
11 Board of Directors of the Authority at a properly noticed meeting on May 11, 2005.

12
13
14 _____
15 Susan Po-Rufino
16
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25

AGREEMENT**May 11, 2005****BETWEEN**

Treasure Island Development Authority
410 Palm Avenue
Treasure Island
San Francisco, CA 94130
Attention: Tony Hall
Executive Director
Phone: (415) 274-0660
Fax: (415) 274-0299

AND

CONUCULTA
(Info to be provided by Mexico)

Attention:
Phone:
Fax:

I. NAMING OF PARTIES

This document (hereafter, "Agreement") sets forth the terms of mutual agreement between the lender, the Treasure Island Development Authority (the "Authority"), the fiscal sponsor and liaison to the Field Fund and project advisor, the Corporation of the Fine Arts Museums of San Francisco ("FAMSF") and the borrower _____ ("Mexico") concerning the forthcoming exhibition of artworks with the working title:

Pan Pacific Murals
By Miguel Covarrubias
(hereafter, the "Murals" or the "Covarrubias Murals")

The final title may be translated into Spanish.

IA. RECITALS

Whereas, the Authority owns the Covarrubias Murals and is responsible for the long-term care and preservation of the Murals; and
Whereas, the parties' primary focus in entering into this agreement is to foster cultural exchange between San Francisco and Mexico and celebrate a shared artistic heritage and to help ensure the conservation and public enjoyment of the Covarrubias Murals; and

Whereas, Mexico has agreed to conserve and restore the Murals to benefit both the public in Mexico and the San Francisco; and

Whereas, Mexico seeks to borrow the Murals for the purpose of public presentation in Mexico after Mexico completes the Murals' conservation and restoration treatment; and

Whereas, Mexico is committed to ensuring the successful execution of project activities, ensure the proper care and protection of the murals, and proper day-to-day management of project activities; and

Whereas, the Authority recognizes the historical and cultural significance of the Murals and is committed to restoring the murals in a professional manner; and

Whereas, at the request of Authority staff FAMSF has agreed to provide consultation regarding art conservation, restoration, handling, and transportation expertise for the City and County of San Francisco and work with conservators in Mexico, on the first visit to establish a course of conservation and restoration treatment, to monitor progress through correspondence and a visit if needed, and on a final visit to confirm conservation and restoration completion; and

Whereas, the Fine Arts Museums in collaboration with COFAM, has received a grant from the Field Fund, a portion of which FAM/COFAM will contribute to the mural conservation costs and shall report to the Field Fund concerning grant fund expenditures and the progress of conservation efforts.

The Parties hereby agree to the terms and conditions of this Agreement.

II. EXHIBITION

II.A. CONTENTS AND RESTORATION OF THE MURALS

The Murals consist of [five (5)] panels painted by Miguel Covarrubias for the Pan Pacific Exhibition on Treasure Island in 1939. The Murals depict cultural scenes of various countries around the world, particularly those countries surrounding the Pacific Rim. Photographic images of the Murals, together with a description, shall be attached as Appendix A ("Description of Murals") to this Agreement. Mexico will cause the Murals to be restored by professional art conservators to standards reasonably satisfactory to the Authority and the Fine Arts Museums of San Francisco at no cost to the Authority and in accordance with a written conservation plan ("Conservation Plan") approved in writing by the Authority, the Fine Arts Museums of San Francisco and Mexico. The cost of that conservation treatment, not to exceed \$40,000, shall be billed through the Corporation of the Fine Arts Museums at the conclusion of the treatment and contingent on FAMSF conservator approval. The Conservation Plan shall be attached as Appendix B ("Conservation Plan") to this Agreement. All conservation and restoration efforts shall be conducted under the approval and supervision of Carl Grimm, Head of Paintings Conservation at the Fine Arts Museums of San Francisco or his or her designee (the "FAMSF Conservator").

II.B. SCHEDULE

Upon completion of the conservation and restoration of the Murals in accordance with the Conservation Plan, the Murals will be presented according to the following schedule (or other schedule as may be approved in writing by both Parties to this Agreement) (the "Exhibition Schedule"):

November 2005 to January 2006

Venue: Centro de las Artes/Pinacoteca

Av. Fundidora y Adolfo Prieto

Col. Obrera, Entrada Av. Madero S/N

Interior Parque Fundidora

C.P. 04010, Monterrey, N.L.

January 2006 to May 2006

Venue: Instituto Cultural Cabañas

Cabañas # 8, Plaza Tapia

C.P. 44360, Guadalajara, Jal

June to September 2006

Venue: Antiguo Colegio de San Ildefonso (ASCI)

Justo Sierra # 16, Centro Histórico

C.P. 06020, México, D.F.

The Murals may travel to the conservation and exhibition venues in Mexico for the approximate dates of May, 2005 through December, 2006, with any further extension subject to separate approval by the TIDA Board of Directors. Mexico shall not move the Murals to any other exhibition venue without the Authority's prior written consent. Upon completion of the exhibition dates, Mexico will be responsible for all costs associated with the packing, couriers, security, transport, and shipping of the Murals to Mexico City. FAMSF shall be responsible for TIDA/FAMSF couriers, security, transport, and shipping of the Murals to the Authority. Any change of dates or location for the exhibition of the Murals shall be agreed upon in writing by all parties.

II.C. SPONSORSHIP

If Mexico finds sponsors for any portion of the Murals, for the purpose of offsetting expenses related to the Murals, Mexico shall inform the Authority of such sponsor.

II.D. FINANCIAL AND CONTRACTUAL RESPONSIBILITIES

1. There shall be no participation fee in Mexico for the viewing of the Murals;
2. Mexico shall provide at no cost to the Authority:

- a. photography of each panel of the Murals and 75 free copies of any catalogue of the Exhibition.
 - b. conservation and preparation of each panel of the Murals in accordance with the Conservation Plan to be billed to FAMSF at conclusion of treatment and subject to FAMSF conservator approval.
 - c. mounting and display for each panel of the Murals
 - d. payment for art insurance (as specified under Section III (Insurance), herein and any other insurance requested by the San Francisco City Risk Manager).
 - e. all local costs of local installation and deinstallation, graphics, security, programs, events and publicity.
 - f. curatorial research for the exhibition, display, and publication of the Murals
 - g. transportation and shipping from the conservation lab in Mexico City to any and all exhibition venues and back to Mexico City
 - h. Courier costs for the maximum of two couriers, including airfare, hotel, and per diem (US \$75 per person per day) at each of the exhibition venues. Two couriers will stay 7 days (or until the Murals are installed at each respective exhibition venue) to oversee unpacking, condition check, and supervise installation of the Murals at the exhibition venue. Costs for deinstallation include 7 days (or until exhibition is deinstalled) for a maximum of two couriers for each of the exhibition venues.
3. As the fiscal sponsor and liaison to the Field Fund, FAMSF shall oversee and cause payment of the following expenses:
 - a. Crating and packing of the murals prior to each transportation and shipping
 - b. Shipping and transport of the murals from TIDA to the conservation lab in Mexico City with a courier and back to TIDA
 - c. Conservation costs in Mexico in accordance with the Conservation Plan, not to exceed \$40,000 , payment contingent on approval of FAMSF conservator after visit to review finished conservation Should costs of conservation exceed \$40,000, the remainder of expenses will be the sole responsibility of, and payment of guaranteed by, CONULCULTA
 - d. Travel of FAMSF conservator to oversee the conservation in Mexico-including the costs associated with travel or other related expenses incurred by the FAMSF Conservator who will be developing a proposed treatment method and traveling to Mexico to meet with the Mexican conservators of the Murals.
 4. Mexico shall immediately alert the Authority and FAMSF of any changes in the facility and/or galleries designated for the exhibition of the Murals during the period covered by this Agreement, and the Authority must approve any such changes. Mexico shall ensure that the facility will conform with the Authority-approved facilities report throughout the exhibition of the Murals.

III. INSURANCE

The Authority shall secure an all-risk, wall-to-wall policy for the exhibition of the Murals. The Authority shall provide to Mexico a certificate of insurance for the full amount of the loan values of the Murals. This coverage will apply from the time of condition checking at the Authority, through the exhibition of the Murals at the exhibition venues listed on the Exhibition Schedule, until the Murals are returned safely and their condition checked at the Authority. Mexico shall be responsible for paying for all costs of insuring the Murals. The Authority shall provide Mexico with a written estimate of such costs prior to Mexico's payment of insurance costs. Mexico shall reimburse the Authority for such insurance costs upon the signing of this agreement.

IV. CARE AND CONSERVATION

IV.A. STANDARD OF SECURITY

The Murals shall be treated by Mexico as they would treat all works of art of great quality and in accordance with standard professional museum practices. Mexico will accept full responsibility for the security and safekeeping of the Murals and will provide security in accordance with standard professional museum practices. Security provisions will include guards posted in and around the Murals during public hours monitoring any and all exits and 24-hour electronic surveillance. Signage and barriers will be provided to help protect the Murals where necessary.

IV.B. ENVIRONMENTAL REQUIREMENTS

The Murals must be stored, handled and exhibited inconformity with standard museum practices, which include the following environmental requirements. Specific instructions for the Murals are listed below.

1.	Temperature:	68-70 degrees Fahrenheit (20-23 C.) +/- 10 degrees.
2.	Humidity:	50% R.H. +/- 5% R.H.
3.	Light:	Not to exceed 5-15 foot candles (50-150 LUX) depending on the media of the Murals (specified in Appendix ____). No panels of the Murals are to be directly exposed to natural light or ultra-violet light of any kind. [No lights are allowed inside of the cases without the permission of the Authority.]
4.	Restrictions:	Under no circumstances shall Mexico allow smoking or food and beverage in the same galleries as the Murals.
5.	Documentation:	Mexico shall accurately document temperature, light and relative humidity in the exhibition galleries every 24 hours from the time the Murals arrive until the departure of the Murals. Mexico shall accumulate and maintain such daily documentation and fax weekly to the Authority as per Appendix ____.
6.	[Exhibition Cases:]	[The Murals must be inside vitrines or behind a protective bar/barrier such as a bar stanchion, approved by the FAMSF Conservator, to prevent visitors from touching or standing too close to the Murals, unless otherwise approved by the Authority. The interior of the cases that are to house the Murals should be

		fabric-lined, not painted.
7.	Storage:	Any storage of the Murals must be reviewed in advance by the Authority and must be in a climate-controlled space with adequate security. Any storage costs required by the Authority must be borne by Mexico.
8.	Handling:	Mexico is required to follow all instructions for handling each panel of the Murals that shall be provided by the Authority in the condition report book that will travel with the Murals after their restoration in accordance with Section V of this Agreement.

V. TRANSPORTATION AND SECURITY

V.A. DESIGN AND FABRICATION OF PACKING CASES

The Authority, in consultation with representatives from the Fine Arts Museums shall be responsible for the specifications for building packing crates for the Murals. The Authority, in consultation with the Fine Arts Museums, shall designate an agent to oversee all aspects of packing and crating the works for shipment. Mexico will designate an agent in Mexico for the exhibition of the Murals. The cost of crating and packing shall be paid by Mexico and billed through Mexico's shipping agent.

V.B. PACKING AND UNPACKING

The representatives of the Authority, in consultation with or acting through the Fine Arts Museums, shall supervise all packing and unpacking of the Murals. Upon arrival of the Murals at the exhibition venues, the crates must remain unopened for 24 hours in order to acclimatize the Murals to the space prior to unpacking. The packing and unpacking of the Murals shall be carried out by Mexico's trained art handlers at no cost to the Authority and supervised by the representatives of the Authority (or the Authority's designated representative from the Fine Arts Museums). At the conclusion of the exhibition of the Murals, the empty crates shall be placed by Mexico in the galleries for 24 hours prior to repacking of the Murals in order to acclimatize the crates.

V.C. CONSERVATION

The Authority, in consultation with or acting through the Fine Arts Museums, will determine whether the Murals are suitable for travel. If any damage should occur to any of the panels of the Murals between the time they leave San Francisco and are returned to the Authority, Mexico shall immediately notify the Authority Executive Director, Tony Hall, by FAX 415-274-0299, or e-mail peter.summerville@sfgov.org. No conservation treatment shall be undertaken without written approval from the Authority. The Authority reserves the right to inspect the Murals from time to time during the exhibition and to remove any panel of the Murals from the exhibition if in the Authority's judgment, or in the judgment of the FAMSF Conservator, such removal is necessary for its protection.

The Murals will be unpacked in climate controlled exhibition space that will be removed and sealed from any galleries that are not fully prepared and painted in advance.

V.D. CONDITION REPORTS

Prior to each shipment of the Murals, the Authority representatives will prepare and sign a Condition Report Book with photographs for each panel of the Murals that shall travel with the exhibition. Mexico shall reimburse the Authority for all costs incurred by the Authority in preparing such Condition Report Book. In advance of packing, the Authority representatives shall examine each panel and provide notes on its condition. At each unpacking, the Authority representatives (in consultation with or acting through the Fine Arts Museum) shall note any change in the condition of the Murals on the Condition Report and date and sign the same. At the time of re-packing, the same procedures shall apply.

V.E. SHIPPING AND TRANSPORT

The final number of shipments shall be determined by the Authority based on the final insurance value of the Murals but shall not exceed 2 shipments. If any shipments are arranged by truck, the trucks must be air-ride, climate-controlled vehicles followed by a security car. The Authority representative, in collaboration with the staff members designated by Mexico, shall make all the necessary arrangements for transportation of the Murals from the Authority to all venues in Mexico and back to San Francisco, including provision for couriers and security in transit. Mexico must consult with the Authority representative, before any arrangements are made for the transportation of the Murals. The cost of all shipping and transport shall be paid by Mexico and billed directly to the shipping agent in Mexico.

V.F. COURIERS

Mexico shall be responsible for the costs of airfare, ground transport to and from the Authority, hotel with breakfast included, and per diem (\$75 per day) for each of the Authority couriers during transport and installation at each of the exhibition venues. For the installation at each venue a maximum of two couriers shall be required for installation estimated at 7 days or until the Murals are installed. At the close of the exhibition at each venue, a maximum of two couriers will be required (approximately 7 days or until the Murals are deinstalled) to oversee deinstallation and packing.

V.G. INSTALLATION AND DEINSTALLATION

The Authority has already provided some existing photos to Mexico on CD Rom, a list of images which is attached to this agreement as Appendix D ("Images of Murals"). Mexico shall provide the Authority with a working schedule for installation and deinstallation of the Murals prior to the shipment of the Murals to Mexico. Mexico shall follow the Authority's courier requirements regarding packing.

VI. PHOTOGRAPH AND PUBLICITY I; SPECIAL EVENTS

VI.A. PHOTOGRAPH AND REPRODUCTIONS

Mexico will provide to the Authority, at no cost to the Authority, 2 color transparencies of each panel of the Murals following Mexico's restoration. Mexico may reproduce the images for publicity and educational purposes only to promote, publicize, and provide information about the Murals. The Authority shall retain all copyright and ownership rights relating to such images. All original photography, including the transparencies, shall be returned to the Authority at the close of the exhibition. No commercial products reproducing any of the works will be made without the Authority's prior approval in writing. No photography will be permitted, except by the press or by special application and with supervision of the appropriate staff of the Authority.

Press previews involving photography and television coverage require the presence of a conservator, or a qualified representative of the Authority, to insure the safety of the Murals. Images to be reproduced for publicity shall be approved in advance by the Authority and when possible shall have an adjacent credit line correctly listing the caption and identifying the Authority as the owner and lender of the Murals.

Mexico shall supply the Authority all attendance figures, installation photographs, samples of printed material and press clippings from each of the venues in Mexico.

VI.B. SPECIAL EVENTS

Mexico agrees to provide invitations to members of the Authority Board of Directors, Fine Arts Museums Board of Trustees and relevant staff and colleagues to the opening celebrations for the Exhibition of the Murals at all venues. The Authority shall provide Mexico with a list of persons at least two months prior to any event.

VII. DEFAULT

Failure or refusal of Mexico to perform or do any act herein required, or to ensure that Mexico comply with all conditions of this Agreement, shall constitute a default. In addition to any other remedy available to the Authority, the Authority may terminate this Agreement upon ten (10) days written notice to Mexico. Such termination does not waive any other legal remedies available to the Authority. Upon any termination of this Agreement, Mexico shall cooperate with the Authority and FAMSF in returning the Murals to the Authority in accordance with the provisions of Articles IV and V of this Agreement.

VIII. LIABILITY FOR LOSSES NOT COVERED BY INSURANCE/INDEMNIFICATION

Mexico agrees to indemnify, defend and hold the Authority, the Fine Arts Museums, the City and County of San Francisco, and the Corporation of the Fine Arts Museums of San Francisco,

including their respective officers, agents, and/or employees, harmless from any and all claims, damages, losses, liabilities and expenses, including, but not limited to, attorneys' fees and costs of litigation (collectively "Claims") in connection with any accident, loss, injury, or damage to persons or property arising out of the acts, errors, or omissions of Mexico, its officers, agents and/or employees, related to the performance of activities conducted pursuant to this Agreement, but only to the extent such Claims are attributable to the acts or omissions of Mexico or its officers, agents, and/or employees. This clause refers only to claims not covered through the Authority's art insurance policy as set forth in Section III (Insurance), above.

IX. DISPUTE RESOLUTIONS

Each of the parties pledges to use its best efforts to amicably resolve to their mutual satisfaction any disagreement arising out of this Agreement. Any controversy would be resolved by a commission that includes a representative of the Authority, a representative appointed by the Mayor of the City and County of San Francisco, and a representative of Mexico. Failing this, the parties agree to attempt to resolve their disputes in non-binding arbitration in accordance with the rules of the American Arbitration Association in effect at the time the Agreement is entered into.

X. FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform due to Force Majeure. "Force Majeure" with respect to a delay in or prevention of performance shall mean (a) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (b) any changes in any applicable laws or the interpretation thereof; or (c) any flood, washout, explosion or any other cause beyond the reasonable control of the party from whom performance is required.

XI. CANCELLATION

In the event of the premature termination of this Agreement by Mexico, Mexico will be billed and held responsible for paying all expenses incurred to the date of termination. Any costs incurred as a result of cancellation will also be charged to Mexico.

XII. GOVERNING LAW

This Agreement shall be construed under and in accordance with the laws of the United States and the State of California. Every effort shall be made by both parties to avoid litigation and to affably work out to their mutual satisfaction any disagreement arising out of this Agreement.

XIII. NOTICES

[INTENTIONALLY BLANK]

XIV. SCOPE OF AGREEMENT

This Agreement and all exhibits and appendices referred to herein, shall constitute the entire understanding of the parties with respect to the Murals, and there are no terms or conditions mutually agreed upon which are not set forth herein. The Agreement and the rights hereby granted shall be personal and the parties may not assign their rights or obligations hereunder without the prior written consent of both parties. Mutually acceptable modifications in the Agreement and its Appendices may be made at any time in writing signed by both parties.

XV. SIGNATURES

This Agreement is done in three originals in the English language. The Parties have read and understood all details in this Agreement and in the Agreement document and have hereto appended their respective signatures and affixed their seals (if any) in the presence of witnesses.

IN WITNESS WHEREOF, agreed to and accepted:

11th day of May, 2005

MEXICO

TREASURE ISLAND DEVELOPMENT
AUTHORITY

[INSERT NAME/TITLE/INSTITUTION]

Tony Hall,
Executive Director

Date

Date

Approved as to Form:

Dennis J. Herrera
City Attorney

DRAFT

DRAFT

DRAFT

By: _____,
Deputy City Attorney

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

Date

FINE ARTS MUSEUMS OF SAN
FRANCISCO
(Fiscal Sponsor and Grantee of Field
Fund)

By _____
Harry S. Parker, III, Director of
Museums

Date

Appendix A ("Description of Murals")

Artist: Miguel Covarrubias

Painting: Suite of Murals: "Pageant of the Pacific"

Date: 1939-1940

Media: Duco lacquer on artist prepared Masonite support (est.)

Dimensions: There are 6 murals in total, one of which is missing. 4 are comprised of 12 panels (arranged in 2 rows of six) and 2 are comprised of 4 panels (arranged in a row, side by side)

1. "Peoples of the Pacific" ca. 15' x 24' (178" x 288") overall, 12 panels
2. "Fauna and Flora of the Pacific ca. 15' x 24' (178" x 288") overall, 12 panels
3. "Economy of the Pacific" ca. 15' x 24' (178" x 288") overall, 12 panels
4. "Native Dwellings of the Pacific Area" ca. 8' x 13' (98" x 156") overall, 4 panels
5. "Native Means of Transportation in the Pacific Area" ca. 8' x 13' (98" x 156") overall, 4 panels
6. *Missing* "Art Forms of the Pacific Area" ca. 15' x 24' overall (12 panels)

Appendix B: Conservation Report

ANNE ROSENTHAL

FINE ART CONSERVATION

Box 150384, San Rafael, California 94915-0384

415-457-1549

MIGUEL COVARRUBIAS MURALS

"PAGEANT OF THE PACIFIC"

Mural Maps Commissioned by Pacific House for the World's Fair 1939-40

Treasure Island, San Francisco, California

Murals now located at the World Trade Center, Ferry Building, San Francisco

EXAMINATION REPORT AND CONSERVATION RECOMMENDATIONS

Titles:

- 1) Peoples of the Pacific, ca. 15' x 24' (178" x 288" overall, 12 panels)
- 2) Fauna and Flora of the Pacific, ca. 15' x 24' (12 panels, each ca. 7'6" x 4')
- 3) Economy of the Pacific, ca. 15' x 24' (12 panels, each ca. 7'6" x 4')
- 4) Native Dwellings of the Pacific Area, ca. 8' x 13' (98" x 156" overall, 4 panels)
- 5) Native Means of Transportation in the Pacific Area, ca. 8' x 13' (97 1/4" x 156" overall, 4 panels)

Missing: Art Forms of the Pacific Area, ca. 15' x 24' (12 panels ca. 7'6" x 4')

Support: Masonite panels, framed in unknown manner on the reverse

Medium: flat duco lacquer with nitrocellulose base (unconfirmed)

Examination Dates: January 12 and 17, 2000 by Anne Rosenthal and Debra Lehane

Examination Aids: quartz light, 4x head loupe magnification, various organic solvents and detergents

EXAMINATION AND CONDITION:

Support:

Each mural consists of multiple panels of 1/4" masonite, butted together with an unknown means of reinforcement on the verso. The seams between the panels are quite visible, without being distracting, and the construction appears to be generally sound and in plane. The larger murals (approximately 15' high by 24' wide) consist of twelve panels, arranged in two horizontal rows of six panels, one row above the other. The composition is horizontal overall, however, the individual panel sections are vertical (i.e. the longest dimension of each panel being upright.) The smaller murals, which are approximately 8' high by 15' wide, consist of four upright (vertical) panels placed side by side. These also create an overall horizontal design.

While the method of construction is unknown, the conservator posits that the masonite panels are individually adhered on the verso to furring strips for reinforcement, and that the furring is probably strengthened and united to additional framing with hardware (nails/screws/straps?). Screws or nails were probably not used to secure the panels from the front, as there are no consistent patterns of breakage/splits/losses/insecurities/planar deformations above or below the paint to indicate this approach. Some few brads have been driven from the front through the masonite, however these are anomalous, and may only indicate later efforts to re-join areas where the panels popped loose from the furring. Since the murals have been moved more than once, it is hoped that an easily reversible method of framing will be found on the verso, and future disassembly will be straightforward.

Numerous losses and disfiguring repairs are noted at edges and corners of the panels. Additionally, there are a few scattered mechanical damages such as scratches and punctures. These are the apparent result of past roughshod handling, transit, and/or installation. Old repairs are distinguished by uneven filling material and mismatched color.

Ground:

There is a smooth white layer of unknown composition serving as a ground layer to the paint. This fairly uniform layer imparts a slight eggshell texture overall.

The ground imparts slight gloss (satin sheen), and is used as a design element at the corners of each mural, achieving a vignette effect. Responsible for much of the luminosity of the work, the exposed ground is used to achieve the highlights of forms, and, due to the loose technique of brushwork, it is clearly visible between the strokes.

Paint Film:

In Adrianna Williams' book Covarrubias (University of Texas Press, Austin, 1994, pg.102-103), she describes the artist's medium as being "flat duco lacquer with a nitrocellulose base". She further writes that, "He diluted his medium with lacquer thinner, added pure dry pigment to it...then applied that combination to his masonite panels. Each brush stroke embedded particles of color into the lacquer; when the piece dried it was hard and water resistant, the color sealed inside a clean, clear shield."

The accuracy of this description is unconfirmed, as no analysis of the paint or ground has been undertaken. However, a lacquer-type medium is certainly plausible. The artist's technique of working the paint is similar to tempera or fresco painting, with linear brushmarking and some cross-hatching over a smooth ground. Color is laid on thinly in most areas, with multiple superimposed strokes used to achieve saturation and brilliance of color.

The body, consistency, and solubility of the paint film are variable. Cleaning tests on the "Transportation" mural, for example, produced less favorable results than on others. Close inspection reveals that the pigment to binder ratio is not consistent, and that some

areas (obviously medium rich) present a crackle system similar to dried lacquer, and that others are lean, without much visible presence of binder. Certainly, if the artist mixed his own colors, variations in the covering power and durability of the paint are to be expected.

Solubility and cleaning tests of the "Transportation" mural indicate the following reaction of the paint film:

Dry cleaning	not soluble
Water	somewhat soluble with friction
Ammonia	soluble with friction
Naphtha	not soluble
Acetone	very soluble

Based upon these results, the "hard and water resistant" quality of the paint described by Ms. Williams is inaccurate. While some areas are water resistant, the paintings are not reliably durable, especially considering that friction is required to remove extraneous surface coatings.

The paint film is otherwise generally sound, with the exception of localized areas of mechanical damage, flaking and loss. Misguided cleaning efforts to remove stains, graffiti or foreign debris have produced halos of abrasion. Paint is burnished and obliterated in areas subjected to repeated touching of the surface. Mirror-image patterns of abrasion and loss, such as noted in the "Dwellings" mural, appear to be the result of past packing/shipping or storage, with panels placed face to face without sufficient protection between.

Old retouchings, probably executed in an oil medium, appear dark and opaque compared to the light, almost translucent color of the original paint. These are found mainly at the edges and corners of the panels, where repairs correct chip losses.

Surface Coatings:

The murals appear to be unvarnished. Overall surface grime resembling nicotine, hand-soil and dust, discolor the surfaces and impart a dulled and yellowed appearance. The binding medium of the paint and ground may have naturally mellowed with age, but cleaning tests, and areas "cleansed" by liquids which have run across the paint surface, attest to the presence of a substantial grime layer.

Solubility and cleaning tests of the "Transportation" mural indicate the following reaction of the surface coatings:

Dry cleaning	very slightly removed
Water	soluble with friction
Ammonia	soluble with friction
Naphtha	not soluble (some foreign matter slightly soluble)
Acetone	paint very soluble

Damage Noted on Individual Murals:

In addition to the general surface soil and scattered mechanical damages, the murals have the following noted conditions:

Native Means of Transportation: (4 panels located at ground level)

1. Most soiled of the murals, with buildup of grime in lower 4-5 feet.
2. First and second panels stained with small brown spots (similar to foxing), throughout Australia and the legend; this may be due to seepage of resin from the masonite, or mold related activity.
3. Numerous drips, especially through the center bottom where liquid marks are characterized by dark accumulations at the terminus.
4. Pencil graffiti in the legend.
5. Large smear under compass, resulting from cleaning attempt (against direction of the brushstrokes).
6. Surface burnished and glossy, resulting from debris and handling.
7. Several large scratches; small indentations in the ground.
8. Abrasion along the bottom edge.
9. Figure below New Guinea defaced.
10. Significant disruptions of design by abrasion (revealing white ground).
11. Patches of soil and foreign debris.

Peoples of the Pacific: 12 panels, 6 panels set at right angles to 6 panels

1. Discolored repairs at junctions of the panels (where 4 corners meet.)
2. Old putty and repaint of repairs, matte and dark in color.
3. Abrasions and scratches, most significant at top surface of ramp handrail.
4. Some defacement of figures in Australia.
5. Overall surface gloss is irregular.
6. Some watercolor-like inpainting on the legend.
7. Numerous horizontal scratches.
8. Splashes of liquids on surface, especially on the last lower right panel.

Economy of the Pacific: (12 panels)

1. Numerous linear drip and tide stains, possibly from condensation.
2. Poor condition of corners and abutments.
3. Stained and spotted legend.
4. Disfigured repairs and retouching, especially along right edge.

Native Dwellings: (4 panels)

1. Remnant of label on title at lower left (removed by the Arts Commission Project Director)
2. Abrasion above legend, possibly due to past cleaning of drip markings.
3. Drip markings difficult to remove.
4. "Butterfly" (i.e. mirror image) patterns of abrasion and paint loss on numerous panels.

5. Scratches in bottom sections.

The Fauna and Flora of the Pacific: (12 panels)

1. Numerous and severe blanched drips and tide stains at the level below the ramp (probably caused by liquids used to clean the ramp).
2. Discolored repairs at junctions of the panels (where 4 corners meet.)
3. "Butterfly" (mirror-image) patterns of abrasion and paint loss on some panels.

SUMMARY AND RECOMMENDED TREATMENT:

Condition Summary:

Considering years of exposure and public contact, the murals are in better condition than one would expect. Structurally, the panels appear sound, with the exception of some mechanical damages at the edges and corners, which reveal numerous chip losses, fillings and repainting. The paint film and ground are stable for the most part, with few areas of flaking paint. The paint film is extremely delicate and cannot endure much friction to the surface. Most paint losses are the result of past handling and transport (causing surface abrasion), yet there are numerous examples of wear from misguided cleaning efforts, visitor contact and both accidental and mischievous handling. The outstanding feature of their condition is disfigurement due to overall grime, stains due to splashes of liquids and condensation, and old repairs, which have darkened and become visually distracting.

Recommendations:

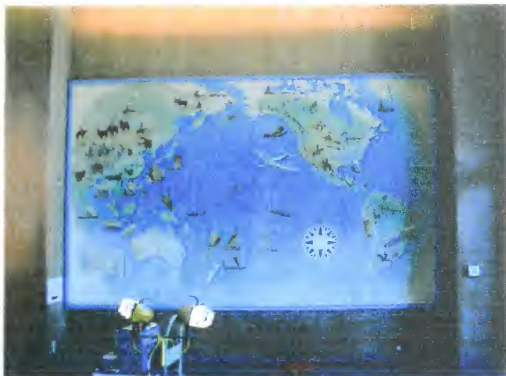
The conservator understands that the Port of San Francisco intends to remove these murals for redevelopment of the building. With this in mind, the following recommendations are offered:

1. The Port should employ a professional art handler to dismantle, move and store the panels, with intermittent consultation with an art conservator, at least during the initial stages of developing a workable procedure. An art conservator should be on hand to contribute to any decisions affecting the condition of the murals, and in case of accidental damage. The masonite is expected to be brittle; some remedial on-site treatment may be required.
2. The Port should provide adequately supportive storage crates and appropriate wrapping materials, to avoid damages during transport and storage, and provide adequate environmental controls throughout the storage period. Upon removal from their current climate and from their secondary framework (or hanging apparatus), the panels may be more susceptible to dimensional changes such as warping or twisting. To avoid myriad damages, and to facilitate reinstallation, climatic controls should be maintained at a stable level, in the range of approximately 60-68 degrees F, and 50-65% relative humidity.
3. Conservation work should follow the standards of practice specified by the American Institute of Conservation of Historic and Artistic Works, including

photographic and written reports of methods and materials used. Conservation treatment should have the aim of improving the appearance and longevity of the works. Specific treatment would include the following:

- a) Cleaning: Solvent tests were necessarily limited during this examination; however, treatment to remove coatings and foreign matter should be done to the extent safely possible. This may be severely limited wherever the paint film, or exposed ground, is sensitive to water and cleaning agents (as was found to be the case in some areas). Particularly delicate areas may be cleaned only lightly, and these would require careful handling to blend to adjacent areas. Only qualified and experienced art conservators should be considered for this work, due to the mature judgment and skills required to produce good results. The tenderness of the paint, and the precise technique used by the artist, leaves little margin for error. Even the most careful application of cleaning agents carries risk of paint abrasion or loss. Cleaning is expected to be a critical step in the overall presentation of the paintings in the future. The surface sheen of the paintings will probably not be uniform, even after treatment; however, blemishes should be substantially improved. If a safe technique of cleaning allows more general removal of surface grime, significant brightening of the colors would be expected.
 - b) Repairs: Remove/amend/re-repair areas of old damage, for visual and structural improvement. Some reinforcement of corners may be necessary. Remove repaints as necessary/possible. Compensate losses as needed with inpainting, to reintegrate the design, matching colors more exactly, with a non-yellowing/darkening reversible medium.
 - c) Surface Coating: Apply a surface coating (varnish) only if necessary to re-saturate areas of blanching paint or ground.
4. Assess the structural support on the verso of the panels, and make recommendations, if needed, to improve stability for the new installation. Engineering consultation would not be within the purview of the conservator.

**Appendix C (“Images of Murals”)
Taken at San Francisco Ferry Building circa 2001**



DSC00001



DSC00002



DSC00004



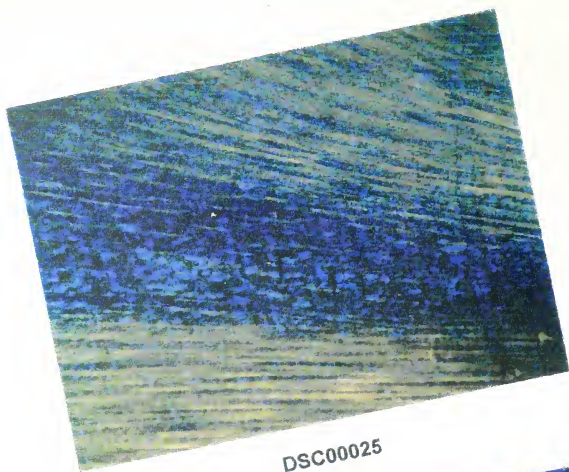
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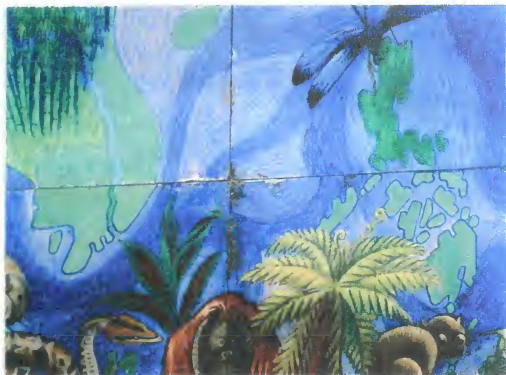
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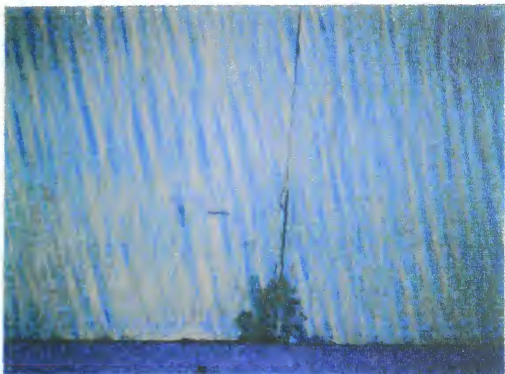
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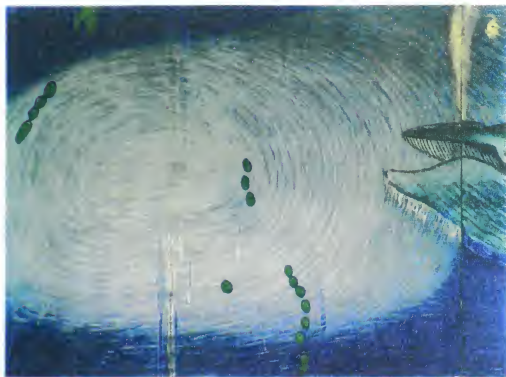
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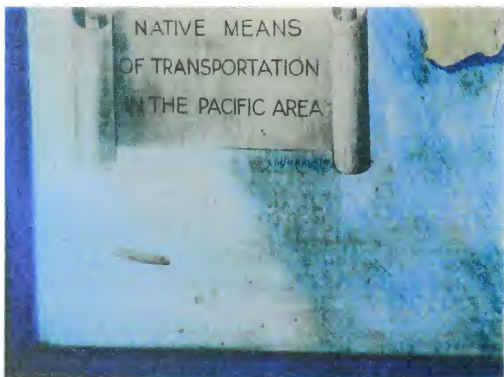
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DSC00034



DSC00036



DSC00009



DSC00011



DSC00039

Exhibit B:

The Charles D. and Frances K. Field Fund

The Field Fund was established by Frances King Field as a way of continuing her lifelong generosity to Bay Area cultural, educational, medical and religious institutions after her death in 1999. Mrs. King and her husband Charles D. Field, whom she married in 1941, were among the leading philanthropists in San Francisco during the second half of the last century, making major donations to Stanford University, the San Francisco Opera, California Pacific Medical Center and Grace Cathedral as well as the Fine Arts Museums of San Francisco. The Fields' donations to the Fine Arts Museums included major support for the Museums' endowment fund as well as art acquisition and a film project.

AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Subject: Resolution Authorizing the
Authority to Amend the Master
Lease with the United States Navy
for Property known as the South
Waterfront Master Lease at Treasure
Island. (Action Item)

Agenda Item No. 8(c)
Meeting of May 11, 2005

Contact/Phone Tony Hall, Executive Director
Marc McDonald, Facilities Director
(415) 274-0660

SUMMARY OF PROPOSED ACTION

Staff Requests authorization to Amend the Master Lease with the United States Navy, known as the South Waterfront Master Lease at Treasure Island by adding additional land to the premises, consisting of approximately 3.73 acres, known as the lot bounded by 3rd and 4th Streets and I and H Avenues.

DISCUSSION

On September 4, 1998, the Treasure Island Development Authority (TIDA) entered into a lease agreement with the United States Navy for Master Lease (Lease Number N6247498RP00P99), called the South Waterfront Master Lease. The Lease Premises include the Building 1 (Administration Building), Building 180 (Rent Production Studios), Building 2 (Island Creative), Building 3, Building 34 (City Store) and a Parking Lot adjacent to the Little League Field at 5th Street and Avenue N.

This amendment would amend the sublease by adding 3.73 acres to the South Waterfront Master Lease for the purpose of providing island residents and the City of San Francisco a playing field for Rugby.

RECOMMENDATION

Approve Staff Recommendation to retroactively Amend Lease Agreement N6247498RP00P99 (South Waterfront Master Lease) to add 3.73 acres of land to premises.

Exhibits

- A Fourteenth Amendment to Lease Agreement N6247498RP00P99 (South Waterfront Master Lease)

[Amendment to South Waterfront Master Lease]

Authorizing an Amendment to the South Waterfront Master Lease between the Authority and the Navy to add additional land to the premises, consisting of approximately 3.73 acres, known as the lot bounded by 3rd and 4th Streets and I and H Avenues.

WHEREAS, The Authority and the United States of America, acting by and through the Department of the Navy (the "Navy"), entered into a master lease dated September 4, 1998, for the Authority to use and rent out certain land and structures in the south waterfront area of Treasure Island (the "South Waterfront Master Lease") at no rent; and,

WHEREAS, The South Waterfront Master Lease enables the Authority to sublease portions of the master leased area for interim uses and generate revenues to support the interim uses and the future redevelopment of the former Naval Station Treasure Island; and,

WHEREAS, The Authority wishes to add additional land to the premises, and

WHEREAS, The Navy concurs with such addition of land to the premises, subject to the condition that such land be used for athletic purposes; now therefore be it

RESOLVED, That the Board of Directors hereby authorizes the Executive Director to enter into an amendment to the South Waterfront Master Lease in substantially the form attached hereto as Exhibit A to increase the premises by approximately 3.73 acres as described above and set forth in further detail in Exhibit A.

1
2
3 **CERTIFICATE OF SECRETARY**
4

5 I hereby certify that I am the duly elected and acting Secretary of the Treasure
6 Island Development Authority, a California nonprofit public benefit corporation, and
7 that the above Resolution was duly adopted and approved by the Board of Directors
8 of the Authority at a properly noticed meeting on May 11, 2005.
9

10 _____
11 Susan Po-Rufino,
12 Secretary
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**FOURTEENTH AMENDMENT
TO LEASE AGREEMENT N6247498RP00P99
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY**

THIS LEASE AMENDMENT made this ____ day of _____ 2005, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 4 September 1998, entered into Lease Agreement N6247498RP00P99 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6247498RP00P99 are hereby amended to reflect the following changes;

Paragraph 1. **Leased Premises**, add the following:

"Use of lot bounded by 3rd and 4th Streets and I and H Avenues excluding that portion of Restoration Site 33, as shown on Exhibit "A-5", attached hereto."

Paragraph 4. **Use of Leased Premises**, add Paragraph 4.3

"The Lessee may use for athletic purposes the lot as shown on Exhibit "A-5", attached hereto."

Paragraph 19. **Submission of Notices**, delete

"Commanding Officer (Attn: Code 624)
Engineering Field Activity - West
Naval Facilities Engineering Command
900 Commodore Drive
San Bruno, CA 94066-5000"

and insert the following:

"Base Realignment and Closure
PMO West
1230 Columbia Street, Suite 1100
San Diego, CA 92101-8571"

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

TREASURE ISLAND DEVELOPMENT
AUTHORITY

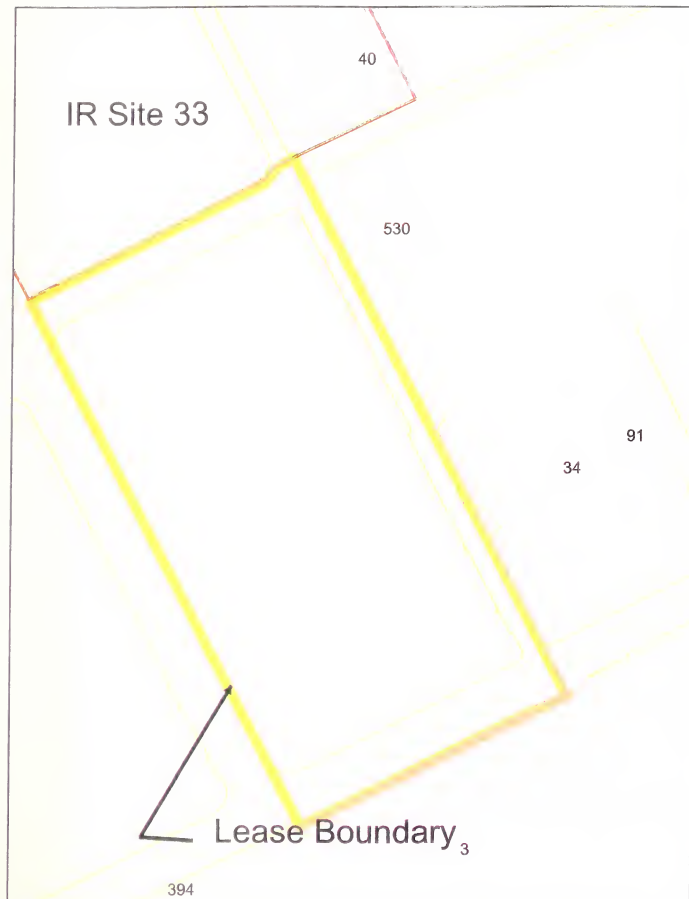
Title _____

Title _____

APPROVED AS TO FORM:

CITY ATTORNEY

LEASE N6247498RP00P99



Athletic Field Lease Area 3.73 ac Exhibit A-5

Notes

1

1 [Establishing an Ad Hoc Nominating Committee.]

2
3 **Resolution establishing an ad hoc nominating committee, consisting of three members**
4 **of the Treasure Island Development Authority ("TIDA") Board of Directors appointed by**
5 **the President, to nominate members of the TIDA Board to serve as officers of the TIDA**
6 **Board in accordance with the TIDA Bylaws.**

7
8 WHEREAS, Under the TIDA Bylaws, officers of the Board of Directors (the "Board") are
9 to be chosen annually; and

10 WHEREAS, The TIDA Bylaws allows the Board to create one or more committees
11 consisting of two or more Directors to serve at the pleasure of the Board; and,

12 WHEREAS, The Board wishes to establish an ad hoc nominating committee to
13 recommend for the Board's approval Directors to serve as officers of the Board for the next
14 year; and,

15 WHEREAS, The Board wishes such ad hoc nominating committee to be comprised of
16 three Directors appointed by the President of the Board; now, therefore, be it

17 RESOLVED, That the Board hereby establishes an ad hoc nominating committee to be
18 comprised of three Directors appointed by the President of the Board; and, be it

19 FURTHER RESOLVED, That such nominating committee shall nominate Directors as
20 candidates for the Board's consideration and election at the Board's regular meeting on June
21 8, 2005, to serve as President, Vice President, Secretary, and Chief Financial Officer of the
22 Board for the twelve (12) month period beginning July 1, 2005 and ending on June 30, 2006;
23 and, be it
24
25

1 FURTHER RESOLVED, That the Board hereby urges any Directors who are interested
2 in serving as an officer of the Board to submit their names to the Executive Director for
3 forwarding to the nominating committee for consideration; and, be it

4 FURTHER RESOLVED, That the Board recommends and urges the Executive Director
5 to work with the members of the ad hoc nominating committee to establish a meeting date,
6 time, and place in accordance with the San Francisco Sunshine Ordinance and the Ralph M.
7 Brown Act at which meeting the ad hoc nominating committee will determine by unanimous
8 vote of the members of the ad hoc nominating committee which Directors to nominate as
9 officers of the Board as described hereinabove; and be it

10 FURTHER RESOLVED, That upon the Board's election of officers in accordance with
11 the TIDA Bylaws, the ad hoc nominating committee shall cease to exist.

12
13 **CERTIFICATE OF SECRETARY**

14 I hereby certify that I am the duly elected Secretary of the Treasure Island
15 Development Authority, a California nonprofit public benefit corporation, and that the
16 above Resolution was duly adopted and approved by the Board of Directors of the
17 Authority at a properly noticed meeting on May 11, 2005.

18
19
20 _____
Susan Po-Rufino, Secretary
21
22
23
24
25

Notes

Harvey M— Rose Accountancy Corporation

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 552-9292 • FAX (415) 252-0461

February 4, 2004

Mr. Tony Hall
Executive Director
Treasure Island Development Authority
410 Avenue of the Palms, Building 1, 2nd Floor
San Francisco, CA 94130

Dear Mr. Hall:

We have completed our review of Treasure Island Development Authority's financial condition, including a review of revenues and expenditures, and our assessment of internal controls and risk factors related to key business functions. Our review found that, with respect to the financial condition of the Treasure Island Development Authority (the Authority): (a) the Authority's financial condition has deteriorated rapidly since Fiscal Year 2002-2003 when it ended the year with a substantial fund balance of \$4.76 million; (b) that FY 2003-2004 reversed this trend by expending significantly more than its operating revenues, thereby decreasing the Authority's fund balance from \$4.76 million by \$3.332 million to \$1.428 million, a decrease of 70 percent in just one fiscal year; (c) that the Authority's financial condition is actually significantly worse than it is portrayed in the Authority's *Statement of Net Assets*, presented as a component unit in the City's Consolidated Annual Financial Report (CAFR) because it does not include an accounting of significant liabilities, namely accounts payable to the San Francisco Public Utilities Commission; and, (d) the current Fiscal Year 2004-2005 budget appears to be out of balance as the available fund balance plus budgeted revenues are less than budgeted expenditures. As a result of these findings, we recommend that the Authority's management take immediate steps to accurately determine the full extent of its liabilities, measure the status of current budget year expenditures and revenues and, take corrective action, such as liquidating unnecessary encumbrances for contractual services, in order to improve the Authority's financial health.

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Executive Director
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Although the current management team is new, the Authority has had four years to move from an emerging organization to a mature enterprise. Yet, a number of significant weaknesses in internal controls and business processes were identified that hinder the Authority's abilities to address its legal and fiscal responsibilities. These weaknesses are discussed in detail after the discussion on the Authority's financial condition.

In total, our review has resulted in the formulation of 28 recommendations. Implementation of these recommendations is critical to provide the new management team with assurances of a sound financial condition and with management controls, coupled with sound business practices, that will assure effective and efficient management of the interim use of Treasure Island as it moves forward toward conversion.

Review of Financial Condition and Analysis of Revenues and Expenditures

Our review included an assessment of the audited financial statements from FY 1999-2000 through FY 2002-2003.¹ Additionally, our review included analysis of the Authority's revenue and expenditure detail for the last five years, including an analysis of the Authority's budget to actual variances for revenues and expenditures.

Lastly, we intended to prepare financial projections for the next three years based on historic trends. However, we found that such projections based on historical trends would not be meaningful to management at this time as prior year revenues have varied widely since the Authority's first year of operations, due to large swings in the leasing of Authority property for events and other activities. In addition, there has been no accounting of significant future expenditures for such items as professional services that will be necessary in order for the Authority to complete its negotiations with the United States Navy for the base conversion process. Without such an accounting, projections based on historical trends would be inaccurate and therefore would not be meaningful.

The Authority's Net Assets and Statement of Activities

Attachment I to this report provides a history of the Authority's Statement of Net Assets, included as a component unit in the City's CAFR. As shown in Attachment I, the Authority's Net Assets (which in this case are essentially fund balances available for expenditure in subsequent years) grew significantly during the four-year period ending June 30, 2000 through June 30, 2003, from a deficit of \$294,000 following the completion of FY 1999-2000, to a surplus of \$4.76 million at the close of FY 2002-2003.

The primary reason for the increases in the Authority's Net Assets from its inception through the end of FY 2002-2003 are displayed in Attachment II, which provides a four year trend in Statements of Activities from FY 1999-2000 through FY 2003-2004, which also includes a

¹ FY 2003-2004 audited financial statements have not been completed by the City's Controller's Office.

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preliminary analysis of FY 2003-2004. The FY 2003-2004 column is based on the closing report in the City's Financial Accounting system (FAMIS).

Attachment II shows that the primary reason for the Authority's early growth in Net Assets was the realization of net revenues for the first four years of its operation, as charges for services grew rapidly, even as operating grants and contributions (funded primarily by the US Navy) decreased considerably. However, as also shown in Attachment II, revenues declined sharply from the levels achieved in prior fiscal years (from \$10.338 million in FY 2002-2003 to \$7.691 million in FY 2003-2004), a decrease of \$2.625 million or 25.4 percent.

Despite the precipitous decline of operating revenues in FY 2003-2004, expenditures exceeded such revenues by a wide margin, indicating that management at that time did not closely monitor operating revenues and make expenditure adjustments accordingly. Consequently, the Authority's fund balance declined from \$4.76 million as of June 30, 2003 to \$1.428 million (the current estimate) as of June 30, 2004.

Lastly, the Statement of Net Assets provided in the City's CAFR appears to exclude a significant liability base on accounts payable by the Authority to the San Francisco Public Utilities Commission (PUC). This account payable, for water, wastewater treatment and electricity, has accumulated over the past four years. We have requested a detailed accounting of the amount owed by the Authority to the PUC, but such an accounting has not been provided as of the writing of this report. However, in testimony before the Board of Supervisors Finance and Audits Committee on December 15, 2004, the General Manager of the PUC stated that the amount owed by the Authority is "over \$4.0 million". However, our recent review of accounting information provided by the PUC indicates that the liability is close to approximately \$1.0 million. Clearly, a liability of this sum would indicate that the overall financial condition of the Authority is substantially worse than prior year CAFR's and the current estimated fund balance would indicate.

Analysis of Prior Year Revenues and Expenditures and Comments on Current Year Budget

Attachment III to this report provides a historical comparison of budget vs. actual revenues and expenditures for Fiscal Year 2000-2001 through 2003-2004. The far right column of Attachment IV shows FY 2004-2005 budgeted expenditures.

As shown in Attachment III, budgeted revenues were equal to or greater than budgeted expenditures and the Authority's actual revenues exceeded budgeted revenues while actual expenditures were less than budgeted expenditures for the period of FY 2000-2001 through FY 2002-2003. The growth in revenues over this period and the practice of balancing budgeted expenditures with operating revenues resulted in the growth of the Authority's net assets (not including the aforementioned accounts payable to the PUC) to \$4.76 million as of June 30, 2003.

However, beginning in FY 2003-2004, this trend was reversed. First, the Authority budgeted approximately \$12.56 million in net expenditures, despite only budgeting approximately \$9.6 million in operating revenues. Therefore, on a budgetary basis, the Authority's budget for FY

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2003-2004 contemplated the use of \$2.94 million, or 61.8 percent of the Authority's net assets of \$4.76 million as of June 30, 2003. However, contrary to prior years, the Authority experienced a significant revenue shortfall in FY 2003-2004 when operating revenues declined from approximately \$9.6 million in FY 2002-2003 to actual revenues of \$7.69 million in FY 2003-2004, a shortfall of \$1.91 million. Although actual expenditures were approximately \$1.5 million less than budgeted, the total shortfall in operating revenues at the end of FY 2003-2004 resulted in a decline in the Authority's Net Assets of approximately \$3.33 million, from \$4.76 million in FY 2002-2003 to \$1.428 million at the close of FY 2003-2004.

The last three columns of Attachment III present information on the Authority's FY 2004-2005 budget. The first, labeled "FY 04-05 Budget" was derived from revenue and expenditure budget information entered into FAMIS after the Authority's FY 2004-2005 budget was adopted. This column shows budgeted expenditures of \$10,260,661 and budgeted revenues of \$9,338,000, a revenue shortfall of \$922,661 based on the initial FY 2004-2005 budget. The next column, labeled "FY 03-04 Carryfwd" shows FY 2003-2004 prior year encumbrances for contractual services that have been carried forward to FY 2004-2005. The far right column labeled "FY 04-05 Total" combines original budget with carryforwards from the prior year.

Attachment III also shows that \$2.2 million of fund balance would be required to balance all budgeted sources of funds against budgeted uses of funds. However, since the FY 2003-2004 year end balance is estimated to be only \$1.428 million, the Authority's budget as approved by the Board of Supervisors and the Authority Board of Directors, and modified to reflect carryforward balances, would not be balanced, but would instead have a \$773,000 deficit. We do note however that the Authority's budget, when submitted to the Board of Supervisors, included an unreserved appropriation of revenue in the amount of approximately \$700,000, which would be expendable by the Authority.

We also found that the Controller routinely carry's forward encumbrances for contractual services unless instructed to liquidate such encumbrances. For FY 2003-2004, the Controller did not receive any instructions from the Authority and therefore carried forward all open encumbrances for contractual services.

We were also unable to review the current Fiscal Year's expenditures and revenues as FAMIS entries were delayed, payroll information is not available from the Redevelopment Agency and the Authority's internal Expenditure and Revenue Accounting spreadsheet were over six months out of date (see discussion of payroll processing and expenditure and revenue accounting below).

Attachment IV to this report displays the information provided in the Authority's FY 2004-2005 budget as submitted to the Board of Supervisors and open encumbrances carried forward from FY 2003-2004 provided by the Controller. Attachment IV shows a total of \$3.5 million in budgeted and carryforward contractual service encumbrances. Since there has been no management review of such encumbrances carried forward from FY 2003-2004, it is possible that the combined total of current year budgeted expenditures and carryforwards exceed remaining contractual authorizations and can therefore be reduced or liquidated.

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The Authority's management should perform a detailed review of the current year budget in order to measure the current financial status of revenues, expenditures and open encumbrances and take appropriate actions to assure that the budget is in balance, and that spending is controlled to stay within current operating revenues and the Authority's available fund balance. Wherever possible, spending should be curtailed and encumbrances liquidated in order to assure that the Authority maximizes its FY 2004-2005 year end balance in order to improve the overall financial condition of the Authority in the future.

Assessment of Internal Controls and Risk Factors Related to Key Business Functions

The purpose of this review was to assess internal controls and risk factors related to key business functions to determine if policies and procedures are sufficient to adequately safeguard, manage, and account for the Authority's assets. In performing this review, we interviewed staff, reviewed written policies and procedures, and examined relevant documents, including contracts, vendor files, financial spreadsheets and system reports. A number of findings were identified not only in key business processes, but also related to the Authority's critical role as custodian of Navy property. Further, weaknesses were identified that crossed key business functions. These weaknesses include extremely poor file management and a lack of current and comprehensive written policies and procedures that would facilitate efficient and effective processes and provide sufficient controls over the Authority's assets.

Payroll Processing

The Authority employees, effective July 22, 2004, were transferred from employment with the City and County of San Francisco to employment with the San Francisco Redevelopment Agency (SFRA) under an Agency Agreement approved by the Authority's Board of Directors on June 9, 2004. This action was intended to be an interim step moving the Authority toward employment of its own staff rather than through an intermediary agency. Accordingly, the term of the Agency Agreement is for six months and then continues on a month-to-month basis, but shall not exceed one year unless approved by both the Authority's Board of Directors and the SFRA Commission. SFRA will charge the Authority the cost of direct staff time used for processing the Authority's payroll as well as an overhead rate. The current Executive Director is directly employed and paid by the Authority rather than SFRA.

A review of the payroll process indicates that procedures are sufficient to provide reasonable assurance that payroll is being processed timely and accurately. Because of the limited staff at the Authority, monitoring employee hours is relatively simple. A review of historical timecards found that all timecards had formal authorization by either the Director or, on a few occasions, the Deputy Director. However, due to the transitory nature of the current agreement with the SFRA, the following significant issues were identified.

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Advanced Payroll Funding

As of the writing of this report, the Authority has not forwarded to the SFRA funding for payroll expenses incurred from July 1 to date although advance payment was set forth in the Agency Agreement between the Authority and SFRA. According to the Agency Agreement, the Authority was to transfer funding for the first quarter payroll from July 1, 2004 through September 30, 2004 within 30 days of the effective date of the agreement. For the remaining quarters, the Authority is obligated to provide advanced funding of the estimated payroll costs by the first day of the quarter, or by October 1, 2004, January 1, 2005, and April 1, 2005. According to the Authority staff, SFRA has not provided estimated payroll costs to the Authority and, therefore, the Authority has been unable to transfer advance funding. Thus, SFRA is fronting funding for the Authority's salaries and fringe benefit costs. According to SFRA staff, this amount as well as the administrative charges that are due are currently being calculated as well as the payroll advance for the first quarter of 2005.

Transition to Authority Employment

The Authority needs to address transition to employment of its own staff rather than through an intermediary agency. The transition should be separated into steps, including a needs assessment, development of alternatives, establishment of criteria for making key payroll process decisions, and creation of personnel policies and procedures. Timelines for these steps should be developed immediately to ensure that the process is not delayed, the best solution is identified, and that the issue is resolved before reaching a crisis. As part of this transition process, the process for paying the Executive Director should be incorporated to determine if efficiencies can be made.

Purchasing of materials, supplies and equipment

As a redevelopment agency, the Authority does not have to comply with City rules and regulations with respect to the purchasing process. Accordingly, the Authority processes transactions independently of the City's Office of Contract Administration and the Purchasing Division. On March 11, 1998, the Authority's Board of Directors approved Purchasing Policies and Procedures which provides guidelines to staff on the purchasing process. With respect to payment for materials, supplies, and equipment, the Authority also has written procedures for invoice processing. However, these procedures have not been formally adopted by the Authority's Board of Directors. Additionally, the Authority has developed internal requisition and payment forms with appropriate controls and authorizations. Review of the purchasing process as described by the Authority staff indicate that written procedures are sufficient to provide reasonable assurance that the purchasing of materials, supplies and equipment complies with the Authority's Purchasing Policies and Procedures and purchases receive appropriate authorization. However, specific areas of weakness were identified and are discussed in detail below.

Segregation of Duties

With the recent executive and financial management turnover, management should pay attention to segregation of duties issues in the purchasing and payment process. Specifically, any given

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staff person should not be able to authorize a transaction, record a transaction, and have physical custody of the item procured. Thus, operating staff should be responsible for actual purchasing and receiving of items, accounting and financial staff should be responsible for recording purchasing and payment activities, and executive staff should be responsible for authorizing all purchasing and payment activities. Based on our review, it appears these functions are appropriately segregated, but with such a small staff, executive staff should be cognizant of the importance of internal controls over the purchasing and payment process.

File Management

Several vendor payments were selected to review supporting documentation and file management. This review identified several instances where file documentation was either missing or was not adequate to support the underlying transaction. The exceptions identified were:

- One vendor file for Noah Griffin for marketing and press services was missing. While the contract and subsequent amendment was located, documentation of the vendor payments totaling approximately \$50,000 was not located.
- One vendor payment to Pestec Exterminator was for \$1,300, while the invoice was for \$1,600 and the encumbered amount noted on the payment form was \$1,200. The file contained no explanation for the variances.
- There were two files for one vendor, Virco Manufacturing Corp., which has had one transaction to date with the Authority. The purchase order was in one file; the invoice payment was in the second file.
- There were two files for one vendor using two separate vendor names, Falcon and GovtJobs.com.
- We found one transaction for \$32,310.25 paid to Toolworks for carpeting that appears to have three invoices stamped "Approved for Payment" and signed by the Authority staff. Two of the invoices are from one vendor, Toolworks, for the same amount, but one invoice specifies "Carpeting at Casa DeLa Vista" and the second invoice specifies "Verve Building Maintenance". The third invoice is from California Carpets for \$29,310.25, and appears to be a quote rather than an actual payment request. The supporting purchasing documents in the file support the selection of California Carpets, not Toolworks, and there is no explanation for the 1) change in vendor, 2) \$3,000 change in cost, and 3) two invoices from Toolworks that were each stamped and processed for payment by the Finance Manager. It should be noted that only one transaction for \$32,310.25 was actually processed and paid by the Controller's Office and we found no duplicate payments in our review of sample files.

Based on this review, the Authority staff should be more conscientious of creating and maintaining files, including providing sufficient documentation and explanation for any exceptions that occur such as payment that is more or less than authorized in the purchasing documents or stated in the invoice.

Work Orders

The Authority's work order expenditures are significant component of the Authority's budget. In FY 2003-2004, actual work order expenditures totaled \$9,384,490 or 70.1 percent of total

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expenditures. This amount is an increase of \$2,497,389 or 36.3 percent from FY 2002-2003 work order actual expenditure total of \$6,887,101. In FY 2004-2005, work order expenditures are budgeted to be \$7,575,428, a decrease of \$1.8 million primarily because the Authority has not budgeted for payment to the San Francisco Public Utilities Commission for utility services.² Because of their significance, the Authority should implement written policies and procedures for monitoring work orders, including the verification that services are not only received, but are also prudent and not excessive. Two work orders in particular should be monitored closely because of their magnitude: Public Works and the City Attorney which had actual expenditures of \$1,828,140 and \$540,324, respectively, in FY 2003-2004. Specific individuals, such as the Facilities Manager for Public Works and the Deputy Director for the City Attorney, should be assigned to monitor these activities on a regular basis, preferably monthly so that any issues that may be arising can be identified early.

Asset Management and Inventory Control

Asset management is critical for the Authority given its caretaker responsibilities for Treasure Island³ and it is in this area, along with facilities management discussed below, that is at present the Authority's greatest weakness in internal controls.

Authority Assets and Inventory

The Authority does not maintain an inventory of its fixed assets, nor does it have established policies defining fixed assets and procedures for fixed asset inventory control monitoring. The Authority has purchased significant fixed assets since its inception in FY 1999-2000, including:

- \$49,544 in FY 2001-2002 for computer equipment,
- \$39,706 in FY 2002-2003 for tables and chairs for special events,
- \$13,084 in FY 2003-2004 for a vehicle,
- \$1,189 in FY 2002-2003 for a fax machine
- \$18,411 in FY 2003-2004 for a sound system in the Chapel
- \$41,730 in FY 2003-2004 for office furnishings

These are physical assets that are at risk from loss or theft. The Authority should develop written policies and procedures for fixed asset tracking and monitoring. Such policies and procedures should include a monetary threshold for items that are not considered to be significant enough to warrant tracking. However, it should be noted in some instances, such as special events tables and chairs, items may be individually considered immaterial, but as a class or grouping, they are significant. While it is not feasible to track and monitor every chair or filing cabinet, these items

² The status of public utilities on Treasure Island pose significant risks both to the Authority as well as to the San Francisco Public Utilities Commission. The issue will be reviewed in detail during the ongoing management audit of the Public Utilities Commission which is being conducted by the Budget Analyst's Office.

³ Geographic references to Treasure Island also include approximately 115 acres of Yerba Buena Island which are anticipated to be transferred to the Treasure Island Development Authority along with the approximately 365 acres on Treasure Island proper.

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should be included on an inventory listing and an inventory count should be taken once a year. Due to the transitory nature of special events, equipment and furnishings related to these activities should be verified more frequently.

Navy Assets and Inventory

At present, the Authority remains the custodian of equipment, including vehicles, and furnishings left behind by the Navy. While ownership of these items has not yet transferred from the Navy to the Authority, the Authority retains the ability to use or lend these assets. Many of the assets are held in a large warehouse and consist of office furnishings such as desks, chairs, file cabinets, and obsolete computer equipment, as well as mattresses, bedding, refrigerators, and other miscellaneous items. According to the Authority staff, the Navy had a full-time warehouse manager and when the Navy vacated the premises, the Navy gave the Authority an inventory listing. Additionally, other equipment and furnishings are located in and at facilities throughout Treasure Island. These items have not been inventoried.

According to the Authority staff, while historically any items taken from the warehouse have been identified on a form and filed in a binder, this process has not been kept up. The binder contains the "TIDA Property Management Plan" which provided guidelines for management of Navy property when a Navy warehouse manager managed the warehouse inventory. However, these guidelines should still be applicable. While there is no longer a Navy warehouse manager, TIDA is responsible for managing this property. According to these guidelines, a master inventory list of all items "issued for re-use" should be maintained in both hard copy and electronic format. This listing does not exist. Further, the guidelines state that the Executive Director should approve all property transfers. However, a review of the binder indicates that the former Executive Director had not authorized any transfers during her tenure. Third parties who have borrowed these assets include City departments, the Treasure Island Homeless Development Initiative, and independent film crews. Further, break-ins to the warehouse and in other Treasure Island facilities, have resulted in damage and theft to an unknown amount of equipment and furnishings. Accordingly, the Authority does not know what Navy property has been transferred to third parties, is lost due to damage or theft, or remains in the warehouse and other facilities.

In mid-1999, the Authority started an inventory of Navy property by sending out listings to various agencies and City departments of items loaned by the Navy to such entities. However, the inventory process was never completed. The Navy listing of property was not reconciled, there was no formal compilation of the listings, and there was no formal resolution of items deemed missing. The Authority also inventoried vehicles using an inventory listing provided by the Navy to the Authority in April 2002. The Navy's listing of 86 vehicles was audited in 2001 and only two vehicles were identified as missing.

The Authority should immediately inventory all Navy property, including vehicles, furnishings and equipment at all facilities, not just the warehouse. The warehouse and vehicle inventories should be cross-checked with the Navy's inventory listing as well as any property removal forms. Any items found to be missing or damaged should be identified and steps should be taken

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to recover either such items or, at a minimum, compensation from the responsible agency or individual. Then, written policies and procedures should be developed for managing and monitoring the Navy's assets and should take into considerations any Navy requirements. Additionally, keys to vehicles, the warehouse and all facilities should be kept in a secure location and provided only to authorized individuals.

Facilities Management

According to the Authority staff, there has not been a dedicated Facilities Manager since early 2001. Since that time, the function has been assigned to various Authority staff. Given that the Authority is custodian and property manager of the Navy facilities, this is a critical role. However, because there has been no Facilities Manager, there is no inventory of facilities or facility conditions on Treasure Island. In fact, keys to facilities have been inventoried recently due to issues over control of the keys and a lack of protocol, which made keys difficult to locate at any given time. Further, the Authority has not developed an interim use plan to maximize use of these facilities prior to the transfer and development of Treasure Island.

Additionally, while the Authority is responsible for facilities and infrastructure, such as roads and landscaping, the Department of Public Works (DPW) actually performs the maintenance functions. However, there is no protocol at the Authority for identifying maintenance needs and monitoring DPW maintenance activities and related costs.

The Authority should inventory all facilities, conduct an assessment of facility conditions, develop an interim use plan, develop a maintenance program, and develop procedures for monitoring ongoing maintenance activities and costs of DPW services. These steps would allow the Authority to approach these facilities in a methodical and strategic way. Further, because of the cumbersome process to locate a potential leasee for a facility, obtain Navy approval for a facility lease, and then negotiate and enter into a facility lease, the above steps may allow the Authority to identify procedural efficiencies, such as obtaining pre-approval from the Navy to lease specific facilities to third parties for allowable uses.

Revenue Collections

Cash Receipts Process

Several issues were identified in the cash receipts process. First, there are no policies and procedures in place for monitoring payments so that the Authority is assured that all payments are received and are timely. The Special Events Coordinator is responsible for special events and film permit revenues. The new Facilities Manager has been given the responsibility for commercial facility lease revenues. However, there are revenues that are not delegated to any particular staff for payment monitoring. A review of deposits from January of 2004 through June of 2004 identified delinquent payments, including a payment of \$49,592 from Treasure Island Enterprises for "past due balance" and a payment of \$12,374 from Delancey Street Foundation for "past due account." The responsibility for timely monitoring of the receipt of revenues should be established and assigned to staff.

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An important control in cash handling is to log in checks and cash when received either through the mail or given directly to Authority staff. Then, a staff person independent of the initial receipt and deposit process should verify that all checks were deposited. While staff reports that the former Finance Manager used to review incoming mail logs, there has not been a staff independent of the deposit process to do a verification for the last six months. The Authority should establish procedures for staff independent of the deposit process verify that all checks and cash have been deposited. This segregation of duties would ensure that any missing checks or cash that were not deposited were identified and investigated and prevents any opportunity to illegally divert Authority revenues without being detected.

The Authority currently allows cash payments, although staff reports that cash is very seldom received. Because cash has a high degree of inherent risk, the Authority should establish a formal policy to no longer take cash payments and should only accept checks, money orders or cashiers checks made payable to Treasure Island Development Authority.

Finally, written policies and procedures should be updated to reflect current procedures and staffing and augmented with written procedures on file maintenance, payment monitoring, deposit verification, and cash policies.

Special Events

The rental of facilities for special events is managed by one Authority employee. The Special Events Coordinator, who is responsible for showing and renting the facilities to third parties, calculating deposit and fee amounts, scheduling, invoicing, recording the event and deposit and fee payments, processing deposit refunds, and arranging for access to the facility on the day of the event. For administrative ease, we do not recommend dividing activities to resolve segregation of duties issues. However, we recommend that the Finance Manager, on a regular basis, reconcile Special Events payment records with actual deposits and refunds, a calendar of events, and staff time worked on the days of those events.

The John Stewart Company Contract

The rental of housing units through the John Stewart Company is the largest single revenue source for the Authority. Housing revenues, almost all of which derive from the John Stewart Company, totaled approximately \$7,072,358 in FY 2003-2004, \$1,327,642 or 15.8 percent less than the \$8,400,000 in total revenues budgeted for the fiscal year. In FY 2004-2005, the Authority has budgeted \$7,880,000 for housing revenues, a decrease of \$520,000 or 6.2 percent from FY 2003-2004 budgeted revenues, but still more than actual total revenues received in FY 2003-2004. According to the Authority's budget documents, the revenue reduction is due to the "soft rental housing market." The average vacancy rate reported by the John Stewart Company for Treasure Island rental units was 8.3 percent for the second quarter of 2004, whereas the U.S. Census Bureau reports the San Francisco residential rental vacancy rate as 4.9 percent for the same period.

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Despite the significance to the Authority's financial health, there is not a dedicated staff person to monitor this revenue source. The John Stewart Company provides monthly statements with payment calculation detail and occupancy data as well as annual audited financial statements. However, there are no central contract files maintained by the Authority and staff had a difficult time locating the five years of audited financial statements, which were ultimately located in several different staff files. Additionally, reconciliation of payments to deposit records is difficult because monthly statements and remittance letters were not always included with deposit records. Further, in September of 2003, the Authority was notified by the John Stewart Company that significant audit adjustments dating back to 1999, 2000, and 2002 totaling \$308,833 would have to be made, indicating significant deficiencies in the John Stewart Company's calculations.

Monitoring monthly remittances and reports would allow the Authority to identify and address issues, such as occupancy rates or questionable expenditures, to verify the accuracy of payments received and contract compliance, and would ensure that revenues from the John Stewart Company are maximized. The Authority should assign the responsibility to the Finance Manager to become expert in the financial specifications of the John Stewart Company contract and to monitor financial compliance with the contract on a regular basis. The Facilities Manager should be responsible for the operating specifications of the contract and should monitor operating compliance with the contract on a regular basis.

Shared Revenues with the Treasure Island Homeless Development Initiative (TIHDI)

The Authority has a revenue sharing agreement with the Treasure Island Homeless Development Initiative (TIHDI) for housing units intended for TIHDI, but sub-leased by the Authority to the John Stewart Company for market-rate residential leasing. Under the agreement, TIHDI currently receives 40 percent of the percentage rent paid to the Authority by the John Stewart Company for rentals of the subject housing units. Because of the link to the John Stewart Company rental revenues, the Finance Manager should also become expert in this agreement and monitor financial compliance with agreement specifications.

Expenditure Contract Management

Professional services contracts are a significant portion of the Authority expenditures, comprising \$1,752,253 in FY 2003-2004 or 13.1 percent of total expenditures. Moreover, professional services contracts are the largest single expenditure in the Authority's budget with the exception of work order services performed by City departments. Historically, contract management was facilitated by the former Finance Manager. However, it appears there are no formal policies and procedures, other than those for purchasing and accounts payable, for contract monitoring. At present, contract management has not been delegated to any one individual staff at the Authority and, in some instances, contracts are managed by individuals who are responsible for the relevant programmatic areas such as for redevelopment planning and development negotiations. Finance staff does maintain a spreadsheet of pertinent data and information on current professional services contracts, such as contractor name, contract amount, term and insurance information. However, a review of the spreadsheet identified several

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contracts that had expired and had not yet been renewed as well as insurance certificates that had been expired and not updated.

As the Authority moves toward the transfer of federal property and redevelopment activities, the use of professional services contracts will increase. The Authority should develop written policies and procedures for monitoring contract status. These policies and procedures should include verifying service delivery, monitoring payments, ensuring insurance requirements are current and maintained, and ensuring that contracts are entered into and are extended, if necessary, in a timely manner (i.e. before services are utilized and expenditures are incurred.).

Expenditure and Revenue Accounting, Recording, and Management Reporting

Finance Manager's Excel Spreadsheets

The former Finance Manager developed detailed transaction spreadsheets to track and monitor the Authority's revenues and expenditures. According to current staff, these spreadsheets were used to prepare monthly financial status reports for the former Executive Director and other staff. According to staff, the former Executive Director, in turn, provided a verbal monthly financial report to the Board of Directors by reading the Finance Manager's report.

Our review found that the spreadsheets were not complete and accurate, containing errors and omitting significant expenditures. For example, in FY 2002-2003, the spreadsheets reported \$1,547,937 in non-personnel expenditures (excluding work orders), whereas the City Controller's financial accounting system FAMIS reported \$1,643,097, a variance of \$95,160 or 5.8 percent. The spreadsheets excluded over \$50,000 paid to Noah Griffin for marketing and press services and other expenditures and contained errors that provided inaccurate expenditure totals.

These spreadsheets are useful management tools only if they are complete, accurate, and timely. The new Finance Manager should develop new spreadsheets to meet the Authority's needs in terms of financial analysis and monitoring budget to actual revenues and expenditures. Further, prior year spreadsheets should be corrected and completed in order to be able to conduct analysis across fiscal years. To do this, the Authority should request the Controller to re-issue April, May and June of 2004 transaction reports which could not be located by the Authority.

Accounting for Deposits

Deposits paid by third parties for facility rentals and held by the Authority are recognized as revenue when they are deposited and posted to the accounting records. However, according to Generally Accepted Accounting Principles (GAAP), this is inappropriate treatment. Deposits are not revenues, but rather are cash held temporarily as security and refunded once an event is over. While records of deposits should be kept for each special event, deposit totals should not be aggregated and treated as revenues. At any given time, the Authority does not readily know deposit totals. The Authority finance staff should work with the Controller's Office to appropriately set up accounting for these transactions and to establish a ledger for tracking deposits.

Mr. Tony Hall
Executive Director
Treasure Island Development Authority
February 4, 2004

Job Descriptions and Delegation of Responsibilities

During our review we noted that there has been turnover in staffing, shifting of job functions, and unclear lines of responsibilities. For example, the Project Coordinator position is also the community liaison and has assumed responsibility for the warehouse inventory as well as emergency planning for the island. The Authority's website also identifies this person as a "Marketing Coordinator." Job descriptions developed for the SFRA also noted that this position "interfaces with myriad City agencies providing services to the Island and to residents, including DPW, PUC, Fire, Police and Muni" and "Assists with Special Events and permitting." An organization chart shows this position reporting to the Project Administrator who serves as the office manager and finance assistant. However, the Project Coordinator reports that she is directly responsible to either the Executive Director or the Deputy Director.

In part, the informality of job functions and reporting and supervisory relationships has resulted in many of the weaknesses identified above. The Authority should develop new job descriptions and responsibilities for each position given the Authority's objectives of 1) property management, 2) negotiating the transfer of federal property, and 3) long-range planning and development of Treasure Island. These job descriptions should clearly define job tasks and areas of responsibility. Further, goals and objectives should be developed for each staff for the coming year and annually thereafter.

Recommendations

The following are recommendations:

1. The Authority's new Finance Director should review all current year actual revenues and expenditures to determine the financial status of the Authority and to re-establish the Authority's management controls over its budget.
2. Wherever possible, management should reduce spending and liquidate encumbrances for contractual services in order to improve the overall financial condition of the Authority in the future.
3. In coordination with the San Francisco Redevelopment Agency, establish a process to calculate and remit future advance payroll funding and administrative cost reimbursement.
4. Address the transition to direct employment of staff rather than through an intermediary agency, including conducting a needs assessment, development of alternatives, establishment of criteria for making key payroll process decisions, and creation of personnel policies and procedures.
5. Ensure that at any given time, one staff person is not able to authorize a transaction, record a transaction, and have physical custody of the item procured.

Mr. Tony Hall
Executive Director
Treasure Island Development Authority
February 4, 2004

6. Create and maintain vendor files in good order, including all supporting documentation and explanation for any transactions that occur.
7. Develop written policies and procedures for monitoring work orders, including that services are not only received, but are also prudent and not excessive in cost.
8. Direct the Facilities Manager to monitor the work order with the Department of Public Works.
9. Direct the Deputy Director to monitor the work order for the City Attorney.
10. Develop written policies and procedures for fixed asset tracking and monitoring and create an inventory of existing Authority assets.
11. Inventory all Navy vehicles, equipment, and furnishings, including those items at the warehouse, at other Navy facilities, and on loan to other agencies or City departments.
12. Develop written policies and procedures for managing and monitoring the Navy's assets and incorporate any Navy requirements.
13. Secure all keys to vehicles, the warehouse and all facilities and provided keys only to authorized individuals.
14. With respect to facility management:
 - Inventory all Navy facilities,
 - Conduct an assessment of facility conditions,
 - Develop an interim use plan,
 - Develop a maintenance program, and
 - Develop procedures for monitoring ongoing maintenance activities of the Department of Public Works.
15. Establish the responsibility for timely monitoring of the receipt of revenues and assign to staff.
16. Establish procedures for staff independent of the deposit process to verify that all checks and cash have been deposited.
17. Refuse all cash payments and only accept checks, money orders or cashiers checks made payable to the Treasure Island Development Authority.
18. Update and augment cash receipts policies and procedures to reflect current procedures and staffing, file maintenance, payment monitoring, deposit verification, and cash policies.

Mr. Tony Hall
Executive Director
Treasure Island Development Authority
February 4, 2004

19. Direct the Finance Manager on a regular basis to reconcile Special Events payment records with actual deposits and refunds, a calendar of events, and staff time worked on the days of those events.
20. Assign responsibility to the Finance Manager to become expert in the financial specifications of the John Stewart Company contract and to monitor financial compliance with the contract on a regular basis.
21. Assign responsibility to the Facilities Manager for the operating specifications of the John Stewart Company contract and for monitoring operating compliance with the contract on a regular basis.
22. Assign responsibility to the Finance Manager to become expert in the financial specifications of the revenue sharing agreement with the Treasure Island Homeless Development Initiative and to monitor financial compliance with the agreement specifications on a regular basis.
23. Develop written contract policies and procedures for management and administration of professional services contracts, including verifying service delivery, monitoring payments, ensuring insurance requirements are current and maintained, and ensuring that contracts are entered into and are extended, if necessary, in a timely manner (i.e. before services are utilized and expenditures are incurred.).
24. Direct the Finance Manager to develop new financial spreadsheets to meet the Authority's needs in terms of financial analysis and monitoring budget to actual revenues and expenditures.
25. Direct the Finance Manager to correct and complete prior year financial spreadsheets in order to be able to conduct analysis across fiscal years.
26. Work with the Controller's Office to set up appropriate accounting for special event deposits and to establish a ledger for tracking deposits.
27. Develop new job descriptions and clear lines of responsibility for each position given the Authority's objectives of 1) property management, 2) negotiating the transfer of federal property, and 3) long-range planning and development of Treasure Island.
28. Develop goals and objectives for each staff for the coming year and annually thereafter.

These are significant issues that must be addressed and tasks that must be completed by the Authority before it becomes a mature enterprise.

Mr. Tony Hall
Executive Director
Treasure Island Development Authority
February 4, 2004

We would like to thank the staff of the Authority for their cooperation and assistance throughout this review. Should you have any questions on this report or require further assistance, please call me at (415) 552-9292.

Sincerely,

Ken Bruce
Senior Manager

Attachments

**HARVEY M. ROSE ACCOUNTANCY CORPORATION
TREASURE ISLAND DEVELOPMENT AUTHORITY**

STATEMENT OF NET ASSETS
(In Thousands)

Year Ending June 30:	2000	2001	2002	2003
Assets				
Deposits and investments	\$ -	\$ 1,463	\$ 3,442	\$ 4,250
Receivables				
Governmental grants and subventions	1,429	36	12	12
Charges for services	382		678	694
Interest			12	33
	<u>1,811</u>	<u>1,499</u>	<u>4,144</u>	<u>4,989</u>
Total Assets	<u>1,811</u>	<u>1,499</u>	<u>4,144</u>	<u>4,989</u>
Liabilities				
Accounts payable	204	306	211	168
Salaries and benefits payable	60	58	57	61
Interest payable		13		
Due to General Fund	1,831			
	<u>2,095</u>	<u>377</u>	<u>268</u>	<u>229</u>
Total Liabilities	<u>2,095</u>	<u>377</u>	<u>268</u>	<u>229</u>
Net Assets	<u>\$ (284)</u>	<u>\$ 1,122</u>	<u>\$ 3,876</u>	<u>\$ 4,760</u>

Note: GASB 34 was implemented for financial statements commencing with the year ended June 30, 2001. Thus the financial data presented for FY 1999-2000, which are presented on a governmental fund basis, are not comp

HARVEY M. ROSE ACCOUNTANCY CORPORATION
TREASURE ISLAND DEVELOPMENT AUTHORITY
FINANCIAL PROFILE
FY 1999-2000 THROUGH FY 2003-2004

STATEMENT OF ACTIVITIES

(In Thousands)

<u>For the fiscal year ended June 30:</u>	2000	2001	2002	2003	<i>FAMIS 2004</i>
Revenues					
Charges for services	\$ 2,494	\$ 5,721	\$ 8,651	\$ 10,290	\$ 7,635
Operating grants and contributions	2,441	567	226	48	-
Interest					56
Total Revenues	<u>4,935</u>	<u>6,288</u>	<u>8,877</u>	<u>10,338</u>	<u>7,691</u>
Expenditures					
Expenses	5,234	4,882	6,123	9,454	11,023
Total Expenditures	<u>5,234</u>	<u>4,882</u>	<u>6,123</u>	<u>9,454</u>	<u>11,023</u>
Operating Transfer In	15				
Net Assets					
Change in net assets	(284)	1,406	2,754	884	(3,332)
Beginning Balance	-	(284)	1,122	3,876	4,760
Ending Balance	<u>\$ (284)</u>	<u>\$ 1,122</u>	<u>\$ 3,876</u>	<u>\$ 4,760</u>	<u>\$ 1,428</u>

Note: GASB 34 was implemented for financial statements commencing with the year ended June 30, 2001. Thus, the financial data presented for FY 1999-2000, which are presented on a governmental fund basis, are not comparable.

Source: CCSF CAFR reports and FY 2003-2004 FAMIS YEAR END REPORT

Harvey M. Rose Accountancy Corporation
TREASURE ISLAND DEVELOPMENT AUTHORITY
FINANCIAL ANALYSIS
FY 2000-01 TO FY 2003-04

Obj	Object Title	FY 00-01 Actual (c)	FY 01-02 Orig Bud (c)	FY 01-02 Actual (d)	Variance	FY 02-03 Orig Bud (c)	FY 02-03 Actual (a)	Variance	FY 03-04 Orig Bud (a)	FY 03-04 Actual (b)	Variance	FY 04-05 Budget	FY 05-04 Carrywds (e)	FY 04-05 Total
001	PERMANENT SALARIES-MISC	876,822	791,182	827,734	(36,552)	947,068	758,453	188,615	939,363	760,988	178,375	850,642	-	850,642
010	ONE-TIME SALARY PAYMENTS	9,324	-	15,762	(15,762)	-	11,137	(11,137)	-	-	-	38,107	-	38,107
013	RETIREMENT	-	-	61,516	(61,516)	-	35,012	(35,012)	-	-	-	57,453	-	57,453
014	SOCIAL SECURITY	-	-	56,608	(56,608)	-	51,691	(51,691)	64,450	50,029	14,421	62,697	-	62,697
015	UNEMPLOYMENT INSURANCE	-	-	34,415	(34,415)	-	38,566	(38,566)	66,317	37,303	29,014	12,096	-	12,096
016	DENTAL SERVICE	-	-	11,107	(11,107)	-	10,477	(10,477)	12,154	9,813	2,341	1,872	-	1,872
017	UNEMPLOYMENT INSURANCE	192,212	184,149	167,400	18,771	189,771	184,424	5,347	15,512	17,173	(1,661)	16,643	-	16,643
021	TRAVEL	2,866	1,381	3,619	(2,232)	17,500	18,426	(826)	15,512	17,173	(1,661)	16,643	-	16,643
022	TRAINING	1,506	5,000	5,252	(252)	8,000	10,146	(2,146)	10,000	1,900	8,100	1,900	-	1,900
023	EMPLOYEE FIELD EXPENSE	185	500	422	78	500	408	92	500	769	(269)	500	-	500
024	MEMBERSHIP FEES	1,010	1,000	-	1,000	1,000	935	165	1,100	1,180	(80)	1,200	-	1,200
025	ENTERTAINMENT AND PROMOTION	23,141	18,153	16,776	1,377	18,153	73,428	(55,275)	18,153	33,971	(15,818)	18,153	-	18,153
027	PROFESSIONAL & SPECIALIZED SVCS	1,344,010	1,650,786	975,626	675,160	2,542,500	1,313,142	1,229,358	3,288,000	1,340,056	1,947,944	1,120,570	-	1,120,570
028	MAINTENANCE SVCS-BLDG & STRCT	98,363	111,750	109,825	1,925	128,000	138,265	(10,265)	154,000	1,010,728	(856,728)	936,000	-	936,000
029	MAINTENANCE SVCS-EQUIPMENT	6,332	-	-	-	-	3,017	(3,017)	1,000	4,963	(3,963)	1,000	-	1,000
031	RENTS & LEASES-EQUIPMENT	49,383	30,000	10,107	19,893	30,000	7,968	22,032	420,000	16,478	403,522	15,000	-	15,000
034	SUBSISTENCE	3,000	3,000	-	-	93,000	19,028	73,972	15,000	10,659	4,341	1,047,500	-	1,047,500
035	OTHER CURRENT EXPENSES	26,723	95,000	8,414	86,586	25,000	25,000	-	5,000	319	4,681	10,000	-	10,000
046	RENTALS & SUPPLIES BUDGET ONLY	81	25,000	-	24,919	-	-	24,919	-	-	24,919	-	-	-
047	FOOD	-	-	-	-	-	-	-	-	-	-	-	-	-
049	OTHER MATERIALS & SUPPLIES	730	1,500	561	939	-	21,960	(21,960)	-	60,419	(60,419)	-	-	-
051	INSURANCE	-	-	-	-	-	1,169	(1,169)	-	38,909	(38,909)	65,000	-	65,000
052	TAXES, LICENSES & PERMITS	20	-	15	(15)	-	-	-	325,000	20	324,980	225,000	-	225,000
053	JUDGEMENTS AND CLAIMS	-	-	66,939	(66,939)	-	-	66,939	-	-	66,939	-	-	-
060	EQUIPMENT PURCHASE	6,069	-	-	6,069	-	-	6,069	-	-	6,069	-	-	-
061	SERVICES OF OTHER DEPTS	4,255,479	6,265,179	5,747,570	517,609	7,094,201	6,887,101	207,100	9,014,932	9,384,490	(369,558)	7,563,228	-	7,563,228
	Total Expenditures	6,896,196	9,187,199	7,967,546	1,219,653	11,419,793	9,454,697	1,965,096	14,358,581	12,822,522	1,536,059	12,060,661	1,278,637	13,339,298
086	INTERDEPARTMENTAL RECOVERY	(2,060,871)	(3,269,620)	(2,069,620)	(1,200,000)	(1,810,000)	-	(1,810,000)	(1,810,000)	(1,810,000)	1,536,059	(1,810,000)	-	(1,810,000)
096	Net Expenditures	4,835,325	5,917,579	5,897,926	19,653	9,609,793	9,454,697	165,096	12,558,581	11,022,522	1,536,059	10,260,661	1,278,637	11,539,298
301	INTEREST	(66,918)	-	57,018	(57,018)	-	126,669	(126,669)	-	-	126,669	-	-	-
308	OTHER CITY PROPERTY RENTALS	5,000,000	6,211,435	5,544,353	2,332,918	9,619,793	9,460,927	(152,866)	9,616,000	7,635,230	(1,980,770)	9,338,000	-	9,338,000
449	TREASURE ISLAND REVENUES	482,004	-	92,000	482,004	-	-	-	-	-	-	-	-	-
499	OTHER LOCAL GRANTS	-	-	92,000	92,000	-	-	-	-	-	-	-	-	-
	Total Revenues	6,182,072	6,211,435	6,693,371	2,481,936	9,619,793	9,593,596	(26,197)	9,616,000	7,691,410	(1,924,590)	9,338,000	-	9,338,000
	Net Revenues / (Use of Fund Balance)	1,346,747	293,856	2,795,445	2,501,599	-	138,899	138,899	(2,942,581)	(3,331,112)	(388,531)	(922,661)	(1,278,637)	(2,201,298)

Source: (a) FY 04-05 Controller BPREP Reports - Exce (c) FY 02-03 BPREP Reports (d) FY 02-04 Controller BPREP Reports - Exce
 (b) FY 03-04 Month 13 FAMS Reports (e) \$551,742 in carryforward for Prof. Sc. in part should be allocated to Other Current Expenses

**Professional Services and Other Non-Construction Contracts under Contract with Treasure Island
Development Authority**

Contractor	Amount Carried Forward From FY 2003-2004	Amount Included in TIDA Budget for FY 2004-2005	Total
Rubicon Enterprises	\$ 139,545	\$ 800,000	\$ 939,545
Partner organization of TIDHI - provides landscaping and maintenance services			
Toolworks	-	110,000	110,000
Janitorial Maintenance			
Treasure Island Homeless Development Initiative (TIDHI)			
Coordination and facilitation of participation of community-based homeless service organizations.	82,619	350,000	432,619
CH2M Hill			
Environmental Engineering Services	-	302,500	302,500
Economic & Planning Systems			
Real estate economics and negotiation support.	-	125,000	125,000
Kutak Rock			
Legal services in support of negotiation with Navy	42,360	16,500	58,860
Roma Design Group			
Urban design and planning consulting services in support of negotiations.	19,084	50,000	69,084
Geomatrix Consultants			
Environmental Engineering Services	164,457	500,000	664,457
Seifel Consulting Inc. (SCI)			
Redevelopment planning consulting services	35,224	25,000	60,224
Shute, Mihaly & Weinberger LLP			
Specialized legal services in support of Tidelands Trust Exchange.	-	25,000	25,000
URS			
Preparation for EIR to support conveyance	53,361	75,000	128,361
"Other new contracts"	-	200,000	200,000
James Nolen			
Unknown	21,800	-	200,000
Approximate total of other encumbrances carried forward from FY 2003-2004	<u>33,000</u>	<u>-</u>	<u>33,000</u>
	\$ 591,450	\$ 2,579,000	\$ 3,348,650



AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Subject: Fiscal Year 2005-06 Budget

Agenda Item No. 11
Meeting of May 11, 2005

Contact/Phone: Tony Hall, Executive Director
Frank Gallagher, Deputy Director
John Farrell, Chief Financial Officer
274-0660

SUMMARY OF REQUESTED ACTION

Approving the Budget of the Treasure Island Development Authority for Fiscal Year 2005-2006, and Authorizing the Executive Director to Submit the Proposed Budget to the Mayor of the City and County of San Francisco for Further Review and Inclusion in the City's FY2005-2006 Budget.

DISCUSSION

The Board of Supervisors of the City and County of San Francisco ("City") established the Treasure Island Development Authority ("TIDA") to manage the conversion of former Naval Station Treasure Island ("Base") from military use to civilian reuse. The specific mission of TIDA is to redevelop the former Base and manage its integration with the City in compliance with Federal, State and City guidelines including the California Tidelands Trust; create new housing and job opportunities for San Francisco residents, including assuring job opportunities for homeless and economically disadvantaged City residents; increase recreational and Bay access venues for San Francisco and Bay Area residents; and promote the welfare and well being of the citizens of San Francisco.

To achieve these goals, TIDA provides services that can be grouped into two broad categories: (i) Property Management and Municipal Services; and (ii) the Transfer of Federal Property to Local Jurisdiction and Planning of Redevelopment Activities.

Property Management/Municipal Services. Under the provisions of a Cooperative Agreement between TIDA and the U.S. Navy, TIDA serves as the property manager for all property that was formerly Naval Station Treasure Island and TIDA is responsible for building maintenance, utility operations and maintenance, landscaping, road repair, management of personal property, etc. In addition, the Cooperative Agreement made TIDA and the City responsible for the provision of municipal services to the Island, including public safety services such as police and fire.

To offset the costs associated with property management and public service responsibilities, TIDA established two principal sources of revenue: (i) revenue generated from interim leasing of existing facilities; and (ii) revenue generated from special events on the Island. These two revenue sources will generate over \$11 million in FY2005-06, which includes \$1,800,000 from the Fire Department for training facilities on Treasure Island. These revenues are expected to remain constant over the next several years

Transfer of Federal Property/Planning for Redevelopment Activities. As the designated Local Reuse Authority ("LRA"), TIDA is negotiating with the U.S. Navy to acquire all real property at the Base that has not been transferred to other federal agencies. On Treasure Island proper approximately 365 acres and on Yerba Buena Island approximately 115 acres will be transferred to TIDA.

In an effort to bring closure to the transfer process, TIDA formally requested in December 2002 that the Navy commence negotiating an "Early Transfer" of the Base to TIDA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under CERCLA, the Navy has an obligation to complete all environmental remediation activities at the Base before a change in ownership can occur. However, under the Defense Environmental Program, the Navy is authorized to enter into an agreement with local agencies, such as TIDA, to carry out aspects of the Navy's remedial obligations with funds provided by the Navy after an Early Transfer. The terms for transferring the Navy's remedial obligations to TIDA, including the amount of funds to be made available for investigation and remediation of contamination at the base, will be set forth in an Environmental Services Cooperative Agreement ("ESCA") to be negotiated between the Navy and TIDA. The Navy and TIDA are in negotiations for an Early Transfer with an ESCA.

At the same time TIDA is negotiating with the Navy on the ESCA, TIDA also will need to negotiate a Consent Agreement with the California Environmental Protection Agency's Department of Toxic Substances Control (DTSC, the lead regulatory agency) to assure that DTSC concurs with the investigation and remediation proposal that forms the basis of the ESCA. Additional negotiations with the Regional Water Quality Control Board – San Francisco Bay Region (RWQCB) and/or the United States Environmental Protection Agency (US EPA) likely will be required to assure their concurrence with certain aspects of the planned investigations and remediation proposals.

PROPOSED FY2005-06 BUDGET

In FY 2003-04 and 2004-05, TIDA made a substantial contribution to the City's budget deficit, agreeing to use its earned revenue surplus to fund increased General Fund costs such as the Fire Department (Keep in mind that more than half of the cost of these activities is a legal responsibility of the City's General Fund). TIDA has used monies from the surplus, which was \$4.76 million at the beginning of FY2003-04, to make this contribution. There is no more surplus. In FY2005-06 expenditures will not exceed revenues. TIDA is presenting a balanced budget.

NOTABLE BUDGET CONSIDERATIONS:

- **REVENUES:** Revenues of \$9,233,000 are projected for FY2005-06, not including \$1,800,000 from the Fire Department for training facilities on Treasure Island. TIDA's main revenue source of approximately \$7.9 million is from the John Stewart & Company (JSC) for management of residential property rentals. This \$9,233,000 is \$105,000 less than the \$9,338,000 in revenues budgeted for FY2004-05. The major source of the shortfall is approximately \$130,000 from projected payments from JSC from residential rentals on Treasure Island.
- **EXPENSES:** The FY 2004-05 Budget provided for expenditures of \$10,260,661 which reflects \$12,060,661 in budgeted expenses less an interdepartmental recovery of \$1,800,000 from the Fire Department. Expenditures will be reduced by approximately \$1 million for FY2005-06 to balance with the projected revenue of \$9,233,000. Notable reductions from amounts budgeted in FY2004-05 include a \$120,570 from Professional & Specialized Services, \$240,000 in Other Current Expenses and \$941,801 from the Fire Department.
- **ADMINISTRATIVE SERVICE FEE:** The FY 2005-06 Budget reflects an annual service fee payment of \$195,000 from TIDA to an administrative services provider as the result of TIDA's transition to an independent agency. These administrative services include payroll, human resources, accounting services, etc. If it is recommended by the TIDA board that TIDA provides these administrative services inhouse than these funds would be made available for contracts relating to negotiations for the early transfer.
- **CAPITAL EXPENDITURES:** The proposed FY 2005-06 budget does not include any funding for capital repairs or improvements. The Public Utilities Commission (PUC) previously noted the following:
 - The PUC and the public could be faced with significant health and safety risks due to insufficient firefighting capacity and general lack of reliability of the water supply system. For example, the 2-million gallon water reservoir on Yerba Buena Island recently developed a crack, which limits the reservoir to 60% capacity.
 - The electrical system is dated (circa 1948) and is in poor condition. The condition of the electrical equipment presents a major safety hazard to PUC staff and warrants replacement.
 - TI/YBI has no long-term back-up power supply. The existing back-up generators run on diesel fuel and as a result it would be extremely expensive to operate the generators during a prolonged service interruption (which occurred recently).
- **AFFORDABLE HOUSING:** TIDA provides housing units and facilities to non-profit organizations on a "rent-free" basis to assist economically disadvantaged and homeless San Franciscans. A conservative estimate of this General Fund subsidy from providing 196 housing units is approximately \$3.0 million for FY 2005-06.

- **OTHER CONSIDERATIONS:** The use of non-tax revenues to pay for City services is limited by two separate legal factors: (i) the Tidelands Trust and (ii) federal disposition rules governing “No-Cost” Economic Development Conveyances of base closure property. The following provides a brief discussion of each of these issues.

Tidelands Trust. Treasure Island proper (the flat portion of the former naval station composed of Bay fill) and a small portion of Yerba Buena Island are subject to the Tidelands Trust. The Tidelands Trust requires that revenues generated from Trust lands be used for Trust purposes. As a result, revenues generated on Treasure Island (i) must be carefully tracked, (ii) should not be used to pay for City services provided to non-Trust properties such as Yerba Buena Island (including the Coast Guard), the Job Corps, and the Bay Bridge, and (iii) must be limited to reasonable costs that directly benefit the Trust. ***In addition, according to the California Attorney General, there is some risk that the City could be compelled to disgorge sums paid by TIDA for basic services that the City routinely provides throughout San Francisco.*** On the other hand, Treasure Island’s geographic remoteness and corresponding need for dedicated personnel may make such services sufficiently unique to justify using Trust revenues to pay for them.

No-Cost EDC. Federal law requires that as a condition to property transfer at no cost from the Navy, for seven years, TIDA must reinvest 100% of the proceeds received by TIDA from the sale, lease or similar use of property on Treasure Island (excluding tax revenues) into activities related to the redevelopment of the base. Federal law identifies a number of “allowable” uses, which are generally capital related – however, the costs associated with the provision of basic municipal services are not considered allowable expenses. In the event TIDA fails to invest the proceeds from the project in a manner consistent with the applicable legal guidelines, the Navy may seek to recoup those proceeds, which would result in TIDA “double paying” for City services.

RECOMMENDATION:

Staff recommends approval of the proposed FY2005-06 Budget.

REVENUES:

The following compares the FY2004/05 budget, projections for FY2004/05 and the proposed budget for FY2005-06:

	FY2004/05 Budget	FY2004/05 Projections	FY2005/06 Proposed Budget
REVENUES:			
TI Administration (210009)	\$1,000	\$170	\$1,000
TI Special Events Revenues (210016)	550,000	486,876	550,000
YBI Special Events Revenues (210017)	5,000	3,750	5,000
TI Commercial Revenues (210018)	600,000	484,519	475,000
TI Film Permit Revenues (210019)	25,000	12,360	25,000
YBI Film Permit/ Cellsite Revenues (210020)	15,000	18,223	15,000
Marina Revenues (210021)	262,000	323,033	262,000
TI Housing Revenues (210022)	7,105,000	6,791,129	6,850,000
YBI Housing Revenues (210023)	<u>775,000</u>	<u>889,883</u>	<u>1,050,000</u>
TOTAL REVENUES FY2004-05	\$9,338,000	\$9,009,943	\$9,233,000

REVENUE DETAIL:

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>TI Administration</u>	\$1,000	\$1,000	No change

This amount reflects miscellaneous collections including reimbursements from staff and public for photocopies, printed materials, postage, etc.

RECOMMENDATION: No Change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>TI Special Events Revenues</u>	\$550,000	\$550,000	No change

This amount reflects revenues received from special events held on Treasure Island such as corporate events, wedding receptions, chapel use, etc... FY2003-04 actuals were \$475,451 and projections for FY2004-05 of approximately \$487,000. Based on the funding of marketing position for corporate events we will project \$550,000 for FY2005-06.

RECOMMENDATION: No change

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>YBI Special Events Revenues</u>	\$5,000	\$5,000	No change

This amount reflects revenues received on Yerba Buena Island from photo shoots.

RECOMMENDATION: No change

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>TI Commercial Revenues</u>	\$600,000	\$475,000	(\$125,000)

This amount reflects executed leases for space on Treasure Island. In FY 2004-05 \$600,000 was budgeted which included \$147,000 from CalTrans that didn't transpire. For FY2005-06 we recommend revenues of \$475,000 based on executed leases as follows:

<u>Tenant</u>	<u>Monthly Rent</u>	<u>Annualized</u>
Island Creative	\$18,540	\$222,480
Kidango	630	7,560
Rex Liu	500	6,000
Shipshape	144	1,728
TIHDI service	105	1,260
Voice of Pentecost	17,372	208,464
Wong	2,060	<u>24,720</u>
		\$472,212

RECOMMENDATION: Reduce by \$125,000

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>TI Film Permits</u>	\$25,000	\$25,000	No change

This amount reflects revenues received from film permits issued on Treasure Island.

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>YBI Film Permits</u>	\$15,000	\$15,000	No change

This amount reflects revenues received from film permits issued on Yerba Buena Island.

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>TI Marina</u>	\$262,000	\$262,000	No change

This amount reflects executed agreements for use at Treasure Island Marina. For FY2005-06 we recommend the same level of revenues as in FY2004-05 based on the following agreements:

<u>Tenant</u>	<u>Monthly Rent</u>	<u>Annualized</u>
Treasure Island Enterprises	\$7,775	\$93,300
Westar	8,500	102,000
TI Yacht Club	684	8,208
Bertone	1,030	12,360
SF Classic Cup	3,914	<u>46,968</u>
		\$262,836

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>TI Housing Revenues</u>	\$7,105,000	\$6,850,000	(\$255,000)

Based on current projections for FY2004-05 of nearly \$6.8 million and payment projections to TIDA provided by John Stewart Company for the coming fiscal year of approximately \$6.75 million, we recommend revenues for FY2005-06 of \$6.85 million.

RECOMMENDATION: Reduce by \$255,000

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>YBI Housing Revenues</u>	\$775,000	\$1,050,000	\$275,000

Of this recommended amount of \$1,050,000, approximately \$925,000 reflects anticipated revenues from existing rentals based on current projections for FY2004-05 of \$890,000 and payment projections to TIDA provided by John Stewart Company for the coming fiscal year of approximately \$920,000. The remaining \$125,000 is projected from the rental of eight residential properties, seven of which are grand Victorians known as the "Great Whites." These properties will be renovated and are anticipated to be available for lease in January 2006.

RECOMMENDATION: Increase by \$275,000

EXPENSES:

SALARIES & FRINGES

The FY2005-06 budget detail reflects twelve (12) positions, eleven (11) Redevelopment Agency classifications as provided by the Redevelopment Agency and the Executive Director position:

Class	<u>SFRA Position (except</u> <u>Executive Director position)</u>	<u>TIDA Job Title</u>	<u>Proposed</u> <u>Annual</u> <u>Salary</u>
	Executive Director	Executive Director	\$162,508
48.7	Staff Associate VI (step 5)	Deputy Director	114,452
46.7	Staff Associate V (step 5)	Chief Financial Officer	103,688
46.7	Staff Associate V (step 5)	Director of Development	103,688
44.7	Staff Associate IV (step 5)	Facilities Manager	93,932
40.7	Staff Associate III (step 5)	Project Administrator/Office Manager	77,090
40.7	Staff Associate III (step 5)	Special Events Coordinator	77,090
40.7	Staff Associate III (step 5)	Exe. Asst./Com. Sec.	77,090
40.7	Staff Associate III (step 5)	Project Manager	77,090
30.5	Staff Associate II (step 5)	Project Coordinator/Community Relations	47,060
30.5	Staff Associate II (step 5)	Marketing – Corporate Events	47,060
29.5	Staff Associate I (step 5)	Administrative Assistant	<u>43,908</u>
Total Proposed TIDA Personnel Salaries			\$1,024,656

This \$1,024,656, not including fringe benefits, will be reduced by \$51,232 to \$973,424 to reflect 5% for attrition savings

RECOMMENDATION: Approve \$973,424 for salaries and \$250,170 for related fringe benefits which will provide sufficient funding for FY2005-06.

EXPENSES – OTHER NON PERSONEL

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Travel Costs Paid to Employees</u>	\$10,000	\$10,000	No change

RECOMMENDATION: Provides same level of funding for FY2005-06

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Training Costs Paid to Employees</u>	\$8,000	\$8,000	No change

RECOMMENDATION: Provides same level of funding for FY2005-06 for training such as conferences and seminars.

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Local Field Expenses</u>	\$500	\$500	No change

RECOMMENDATION: Provides same level of funding for FY2005-06 such as parking reimbursement.

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Membership Fees</u>	\$1,200	\$1,200	No change

RECOMMENDATION: Provides same level of funding for FY2005-06

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Promotional & Entertainment Ex</u>	\$18,153	\$18,153	No change

RECOMMENDATION: Provides same level of funding for FY2005-06 which includes funding for open house.

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>Professional & Specialized Servs.</u>	\$1,120,570	\$1,000,000	(\$120,570)

The amount of \$1,120,570 budgeted in FY2004-05 provided funding for the following:

<u>Name</u>	<u>Service</u>	<u>Amount</u>
TIHDI	Community based homeless service organization	\$365,000
CH2M Hill	Environmental Engineering Services	200,000
Geomatrix	Environmental Engineering Services	200,000
URS	Preparation of EIR	60,000
Seifel Consulting	Redevelopment Planning Consulting Services	30,000
EPS	Pro forma analysis and negotiations	150,000
Roma Design	Urban design and planning consulting services	50,000
Other	Other contracts (bond counsel/environmental services)	<u>65,570</u>
	Total	\$1,120,570

We have budgeted \$1,000,000 for FY2005-06 which is \$120,570 less than the \$1,120,570 budgeted in FY2004-05 and will provide funding for the following:

<u>Name</u>	<u>Service</u>	<u>Amount</u>
TIHDI	Community based homeless service organization	\$ 390,000
CH2M Hill	Environmental Engineering Services	200,000
Geomatrix	Environmental Engineering Services	135,000
Misc	Other contracts (financial/environmental services)	<u>80,000</u>
	Subtotal	\$805,000

Administrative Service Fee*	<u>195,000</u>
Total	\$1,000,000

***Administrative Service Fee - Annual service fee payment from TIDA to administrative services provider as the result of TIDA's transition to an independent agency. These administrative services include payroll, human resources, accounting services, etc. If it is recommended by the TIDA board that TIDA provides these administrative services inhouse than these funds would be made available for contracts relating to negotiations for the early transfer.**

Treasure Island Homeless Development Initiative (TIHDI) - \$390,000

Under this contract TIHDI provides several services including: coordinate and facilitate participation of community-based homeless service organizations, provide input in community serving and development components, and coordinate recreational services on Treasure Island through various programs. The proposed budget for FY2005-06 is \$390,000 which reflects an increase of \$25,000 from FY2004-05. This amount provides funding for operation of the gym.

The following is an estimate of the environmental engineering consulting services that is projected for FY 2005-06. These amounts are what we project to be necessary in excess of what has been encumbered for these consultants for FY 2004-05.

CH2M Hill - \$200,000

As outlined in the 2nd Amendment to the CH2M contract, the current FY04-05 budget provides funds for CH2M to assist TIDA in negotiating through a term sheet agreement with the Navy on an Early Transfer (defined as Phases 1a and 1b). The contract anticipates that, upon reaching a term sheet agreement with the Navy, with authorization by the TIDA Board, TIDA and CH2M would enter into Phase 2 of the contract, which would provide funds estimated at \$460,000 to finalize ESCA negotiations with the Navy, negotiations with environmental regulatory agencies and negotiations with an environmental insurance provider. It is estimated that these agreements with the Navy would be finalized approximately March 2006. We have budgeted \$200,000 of the \$460,000 for FY2005-06 with the remaining amount to be budgeted in FY2006-07.

Geomatrix - \$135,000

Geomatrix will continue to assist TIDA with oversight of the Navy's on-going clean-up program. If and when TIDA is successful in negotiating a transfer of environmental responsibilities from the Navy, Geomatrix's role would be significantly eliminated, if not reduced entirely. The \$135,000 projection assumes that an Early Transfer deal is consummated with the Navy in March 2006. Therefore, TIDA would require Geomatrix's oversight services, at approximately \$15,000 per month for nine (9) months for a total FY2005-06 budget of \$135,000.

RECOMMENDATION: Reduce Professional & Specialized Services by \$255,570

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>Scavenger Services</u>	\$25,000	\$25,000	No change

Norcal provides janitorial services to Treasure and Yebra Buena Islands.

RECOMMENDATION: Provides same level of funding for FY2005-06

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>Janitorial Services</u>	\$110,000	\$130,000	20,000

Toolworks provides janitorial maintenance services for various buildings on Treasure Island. Toolworks is a partner organization of TIDHI and employs former homeless individuals and families. The \$110,000 provided funding in FY2004-05 for a 9 month period from September 1, 2004 through June 30, 2005. This \$130,000 will provide sufficient funding for janitorial services for FY2005-06.

RECOMMENDATION: Increase by \$20,000

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Grounds Maintenance</u>	\$800,000	\$725,000	(\$75,000)

Rubicon Enterprises provides all landscaping maintenance services on Treasure and Yerba Buena Islands. Rubicon is a partner organization of TIDHI and employs former homeless individuals and families. In FY2005-06 we recommend a reduction of \$75,000 based on actual billings.

RECOMMENDATION: Reduce by \$75,000

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Other Building Maintenance Sers</u>	\$1,000	\$1,000	No change

This \$1,000 provides the same level of funding for FY2005-06

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>DP/WP Equipment</u>	\$1,000	\$1,000	No change

This \$1,000 provides the same level of funding for FY2005-06

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Rents and Lease - Equipment</u>	\$15,000	\$27,000	\$12,000

This \$27,000 provides sufficient funding for office machine rental including copier, postage machine and agency vehicle for FY2005-06

RECOMMENDATION: Increase by \$12,000

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Other Current Expenses - Budget</u>	\$7,500	\$7,500	No change

This \$7,500 provides the same level of funding for FY2005-06 for postage and delivery costs, printing, etc.

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Other Current Expenses</u>	\$1,040,000	\$800,000	(\$240,000)

In 1999, TIDA entered into "The Sharing Agreement" with Treasure Island Homeless Development Initiative (TIHDI). This Sharing Agreement provides a revenue share to TIHDI of the income received by 112 shared units on Treasure Island and after 5 years, provides a revenue share of 41 YBI units. In addition, after the market rate lease with TIDA is over (7 or 8 years) the 112 units are to be "turned over" to TIHDI in habitable/move in condition. Based on the sharing agreement approximately \$800,000 in payments will be made in FY2005-06. TIDHI payments were previously netted out from residential revenues and never properly reflected as an expense item until FY2004-05.

RECOMMENDATION: Reduce by \$240,000

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Insurance Budget</u>	\$65,000	\$50,000	(\$15,000)

This \$50,000 is sufficient funding for insurance, such as Director's Liability, for FY2005-06.

RECOMMENDATION: Reduce by \$15,000

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Payments to Other Govt. Agencies</u>	\$225,000	\$225,000	No change

TIDA estimates it will owe the U.S. Navy approximately \$1 million associated with unpaid common area maintenance (CAM) charges pursuant to the Cooperative Agreement. The Navy has informally agreed to allow TIDA to repay these charges over time. In FY2003-04 and FY2004-05, \$350,000 and \$225,000 was set aside, respectively, for this purpose for a total of \$575,000.

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Materials & Supplies - Budget</u>	\$10,000	\$10,000	No change

RECOMMENDATION: Provides same level of funding for FY2005-06 for office supplies.

EXPENSES – SERVICES OF OTHER DEPARTMENTS:

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>DTIS - ISD Services</u>	\$7,372	\$11,900	\$4,528

This \$11,900 provides sufficient funds for computer related services as requested by the Department of Telecommunications and Information Systems for FY2005-06.

RECOMMENDATION: Increase by \$4,528

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>Insurance & Risk Reduction</u>	\$5,000	\$5,000	No change

This \$5,000 provides sufficient funds as requested by the City Mayor's Office of Insurance and Risk Reduction for FY2005-06.

RECOMMENDATION: No change

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>City Attorney</u>	\$450,000	\$400,000	(\$50,000)

This \$400,000 provides sufficient funds for the City Attorney's Office for legal services for FY2005-06.

RECOMMENDATION: Reduce by \$50,000

	<u>FY2004-05</u> <u>Budget</u>	<u>FY2005-6</u> <u>Budget</u>	<u>Increase/</u> <u>Decrease</u>
<u>Bus & Economic Development</u>	\$150,000	\$150,000	No change

The \$150,000 covers work the Mayor's Office of Base Reuse and Special Projects provides on the Treasure Island redevelopment planning project. This primarily provides funding for Michael Cohen and Kyri McClellan for support of the redevelopment project.

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>DTIS – Telephone</u>	\$33,981	\$23,300	(10,681)

This \$23,300 provides sufficient funds for telephone services as requested by the Department of Telecommunications and Information Systems for FY2005-06.

RECOMMENDATION: Decrease by \$10,681

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Fire Department</u>	\$5,054,001	\$4,100,000	(941,801)

The Fire Department requested over \$5.2 million for full funding for FY 2005-06. Due to expenditures not exceeding revenues in FY2005-06 we reduced the Fire Department by \$941,801 to \$4.1 million, which reflects the same level of funding for FY2004-05.

RECOMMENDATION: Decrease by \$941,801

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Human Res – Mangmnt Training</u>	\$1,500	\$1,500	No change

Provides same level of funding for FY2005-06

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Purch -Central Shops–Auto Maint</u>	\$3,000	\$3,000	No change
<u>Purch -Central Shops–Fuel</u>	\$2,000	\$2,000	No change
<u>Purch –Reproduction</u>	\$5,224	\$5,224	No change

Provide same level of funding for FY2005-06.

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Police Department</u>	\$765,000	\$765,000	No change

The Police Department's FY2004-05 full funded budget was approximately \$2.1 million of which \$765,000 was funded by TIDA. The recommended amount of \$765,000 provides the same level of funding for FY2005-06.

RECOMMENDATION: No change

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>Public Utilities Commission (PUC)</u>	\$0	\$300,000	\$300,000

In FY2004-05 TIDA had budgeted an amount of \$1.06 million for the PUC. The PUC, however, at the direction of the Mayor's Office, agreed to provide services to Treasure Island in a manner consistent with the rest of the City and, thus, without a direct reimbursement from the TIDA Budget.

Just like most decommissioned military facilities, Treasure Island's infrastructure does not begin to meet civilian standards. Electricity has been provided to the Base from the East Bay's electrical distribution system, with back-up provided by San Francisco's electrical distribution system. However, Bay Bridge retrofit activities caused the loss of the San Francisco back-up electric cable in FY2003. Therefore, with the assistance of the PUC, TIDA rented and set-up two generators to provide electricity in the event the East Bay service is lost. The annual cost of renting these generators is approximately \$300,000 and has been included in the FY2005-06 budget. This amount was not included in the FY2004-05 budget.

RECOMMENDATION: Increase by \$300,000

	<u>FY2004-05 Budget</u>	<u>FY2005-6 Budget</u>	<u>Increase/ Decrease</u>
<u>DPW - Building Repair</u>	\$948,350	\$900,000	(\$48,350)
<u>DPW - Engineering</u>	\$ 75,000	\$65,000	(\$10,000)
<u>DPW - Construction Mgmt</u>	\$ 45,000	\$35,000	(\$5,000)

In concurrence with DPW staff, we recommend the abovementioned reductions for FY2005-06.

RECOMMENDATION: Decrease Building Repair by \$48,350, Engineering by \$10,000 and Construction Management by \$5,000

**MEETING CALIFORNIA COMMUNITY REDEVELOPMENT LAW
REQUIREMENTS:**

Pursuant to Section 33606 of the California Community Redevelopment Law (CRL) an agency shall adopt an annual budget containing all of the following specific information, including all activities to be financed by the Low and Moderate Income Housing Fund established pursuant to Section 33334.3:

- (a) The proposed expenditures of the agency (See Attachment B).
- (b) The proposed indebtedness to be incurred by the agency. There is no indebtedness.
- (c) The anticipated revenues of the agency (See Attachment A).
- (d) The work program for the coming year, including goals (See Attachment D for Performance Measures).
- (e) An examination of the previous year's achievements and a comparison of the achievements with goals of the previous year's work program (See Attachment D for Performance Measures).

Since TIDA is a redevelopment agency under the CRL, it needs to comply with the requirements of the CRL. TIDA has not yet adopted a redevelopment plan and is not receiving any tax increments, so we have nothing to report regarding activities financed by the Low and Moderate Income Housing Fund.

1 [Approving the TIDA Annual Budget for FY 2005-2006.]
2

3 **Resolution approving the budget of the Treasure Island Development Authority for**
4 **fiscal year 2005-2006, and authorizing the Executive Director to submit the proposed**
5 **budget to the Mayor of the City and County of San Francisco for Further Review and**
6 **Inclusion in the City's 2005-2006 Budget**

7 WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island
8 and Yerba Buena Island (together, the "Base"), which is currently owned by the United States
9 of America ("the Federal Government"); and,

10 WHEREAS, Treasure Island was selected for closure and disposition by the Base
11 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
12 subsequent amendments; and,

13 WHEREAS, In 1995, the General Services Administration and the Bureau of Land
14 Management determined that Yerba Buena Island was surplus to the Federal Government's
15 needs and could be transferred to the administrative jurisdiction of the Department of Defense
16 under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure
17 Island; and,

18 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
19 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
20 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
21 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
22 conversion of the Base for the public interest, convenience, welfare and common benefit of
23 the inhabitants of the City and County of San Francisco; and,

24 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
25 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter

1 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority
2 as a redevelopment agency under California redevelopment law with authority over the Base
3 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the
4 Base which are subject to Tidelands Trust, vested in the Authority the authority to administer
5 the public trust for commerce, navigation and fisheries as to such property; and,

6 WHEREAS, As a Redevelopment Agency the Authority has no indebtedness and
7 conforms to California Community Redevelopment Law regarding the adoption of budgets
8 pursuant to Section 33606; and,

9 WHEREAS, As provided under the Authority's Bylaws, the Executive Director and
10 Finance Director have prepared a budget for the Authority for Fiscal Year 2005-2006, a copy
11 of which is attached to this resolution as Exhibit A (the "FY 2005-2006 Budget Submittal");
12 Now therefore be it

13 RESOLVED, that the Board of Directors of the Treasure Island Development Authority
14 hereby adopts and approves the budget of the Treasure Island Development Authority for
15 fiscal year 2005-2006, and hereby authorizes the Executive Director to submit the proposed
16 budget to the Mayor of the City and County of San Francisco for further review and inclusion
17 in the City's 2005-2006 Budget.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on May 11, 2005.

Susan Po-Rufino, Secretary

Attachment A

TREASURE ISLAND DEVELOPMENT AUTHORITY

FY 2005-06 BUDGET PROJECTIONS

REVENUES

	Monthly	Annual	Projection	Notes
210009 TI Administration			1,000	No change
210016 TI Special Events			550,000	No change
210017 YBI Special Events			5,000	No change
210018 TI Commercial				
Island Creative	18,540	222,480		
Kidango	630	7,560		
Rex Liu	500	6,000		
Shipshape	144	1,728		
TIHDI service	105	1,260		
Voice of Pentecost	17,372	208,464		
Wong	<u>2,060</u>	<u>24,720</u>		
Subtotal		472,212	475,000	Based on actual leases
210019 TI Film Permit			25,000	No change
210020 YBI Film/Cellsite			15,000	No change
210021 Marina				
TIE	7,775	93,300		
Westar	8,500	102,000		
TI Yacht Club	684	8,208		
Bertone	1,030	12,360		
SFCC	<u>3,914</u>	<u>46,968</u>		
Subtotal		262,836	262,000	No change
210022 TI Housing (before TIHDI payments)				
Base Rent	36,743	440,916		
Percentage Rent	507,000	6,084,000		
CAM	<u>26,580</u>	<u>318,960</u>		
Subtotal		6,843,876	6,850,000	In line with John Stewart Projections for FY2005-06
210023 YBI Housing (before TIHDI payments)				
Base Rent	5,010	60,120		
Percentage Rent	68,685	824,220		
CAM	3,625	43,500		
Great Whites		<u>125,000</u>		
Subtotal		1,052,840	1,050,000	In line with John Stewart Projections for FY2005-06
REVENUE SUBTOTAL			9,233,000	
Interdepartmental Recovery (Fire Trng Lse)		1,800,000	<u>1,800,000</u>	
TOTAL PROJECTED REVENUES			11,033,000	

TREASURE ISLAND DEVELOPMENT AUTHORITY FY 2005-06 BUDGET PROJECTIONS

REVENUES

	Monthly	Annual	Projection	Notes
210009 TI Administration			1,000	No change
210016 TI Special Events			550,000	No change
210017 YBI Special Events			5,000	No change
210018 TI Commercial				
Island Creative	18,540	222,480		
Kidango	630	7,560		
Rex Liu	500	6,000		
Shipshape	144	1,728		
TIHDI service	105	1,260		
Voice of Pentecost	17,372	208,464		
Wong	<u>2,060</u>	<u>24,720</u>		
Subtotal		472,212	475,000	Based on actual leases
210019 TI Film Permit			25,000	No change
210020 YBI Film/Cellsite			15,000	No change
210021 Marina				
TIE	7,775	93,300		
Westar	8,500	102,000		
TI Yacht Club	684	8,208		
Bertone	1,030	12,360		
SFCC	<u>3,914</u>	<u>46,968</u>		
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REVENUE SUBTOTAL			9,233,000	
Interdepartmental Recovery (Fire Trng Lse)		1,800,000	<u>1,800,000</u>	
TOTAL PROJECTED REVENUES			<u>11,033,000</u>	

Attachment B

Char	Obj	Subobject	Subobject Title	FY04-05 Orig	FY05-06 (w/cola)	Change
001	001	00101	MISC-REGULAR	850,642	973,424	122,782
013	013	01301	RETIRE CITY MISC	188,868	250,170	61,302
021	021	02101	TRAVEL COSTS PAID TO EMPLOYEES	10,000	10,000	-
021	022	02201	TRAINING COSTS PAID TO EMPLOYEES	8,000	8,000	-
021	023	02302	LOCAL FIELD EXP	500	500	-
021	024	02401	MEMBERSHIP FEES	1,200	1,200	-
021	025	02501	PROMOTIONAL & ENTERTAINMENT EXPENSE	18,153	18,153	-
021	027	02700	PROFESSIONAL & SPECIALIZED SVCS-BUDGET	1,120,570	1,000,000	(120,570)
021	028	02801	SCAVENGER SERVICES	25,000	25,000	-
021	028	02802	JANITORIAL SERVICES	110,000	130,000	20,000
021	028	02805	GROUPS MAINTENANCE	800,000	725,000	(75,000)
021	028	02899	OTHER BLDG MAINT SVCS	1,000	1,000	-
021	029	02911	DP/WP EQUIPMENT MAINT	1,000	1,000	-
021	031	03100	RENTS & LEASES-EQUIPMENT-BUDGET	15,000	27,000	12,000
021	035	03500	OTHER CURRENT EXPENSES - BUDGET	7,500	7,500	-
021	035	03599	OTHER CURRENT EXPENSES	1,040,000	800,000	(240,000)
021	051	05100	INSURANCE - BUDGET	65,000	50,000	(15,000)
021	052	05241	PAYMENTS TO OTHER GOVT	225,000	225,000	-
040	040	04000	MATERIALS & SUPPLIES-BUDGET	10,000	10,000	-
081	081	081C5	IS-TIS-ISD SERVICES (AAO)	7,372	11,900	4,528
081	081	081CB	GF-MYR-INS & RISK REDUCTION (AAO)	5,000	5,000	-
081	081	081CT	GF-CITY ATTORNEY-LEGAL SERVICES (AAO)	450,000	400,000	(50,000)
081	081	081ED	GF-BUS & ECN DEV	150,000	150,000	-
081	081	081ET	GF-TIS-TELEPHONE (AAO)	33,981	23,300	(10,681)
081	081	081FD	GF-FIRE (AAO)	5,041,801	4,100,000	(941,801)
081	081	081H2	GF-HR-MGMT TRAINING (AAO)	1,500	1,500	-
081	081	081PA	IS-PURCH-CENTRAL SHOPS-AUTO MAINT (AAO)	3,000	3,000	-
081	081	081PF	IS-PURCH-CENTRAL SHOPS-FUEL STOCK (AAO)	2,000	2,000	-
081	081	081PR	IS-PURCH-REPRODUCTION (AAO)	5,224	5,224	-
081	081	081PS	GF-POLICE SECURITY (AAO)	765,000	765,000	-
081	081	081RE	GF-REAL ESTATE SERVICE (AAO)	35,000	-	(35,000)
081	081	081UH	PUC	-	300,000	300,000
081	081	081WB	SR-DPW-BUILDING REPAIR (AAO)	948,350	900,000	(48,350)
081	081	081WE	SR-DPW-ENGINEERING (AAO)	75,000	65,000	(10,000)
081	081	081WM	SR-DPW-CONSTRUCTION MGMT (AAO)	40,000	35,000	(5,000)
086	086	08699	INTERDEPARTMENTAL RECOVERY (Fire Dept)	(1,800,000)	(1,800,000)	-
				10,260,661	9,229,871	(1,030,790)
350	398	39899	TI ADMINISTRATION REVENUES	1,000	1,000	-
350	398	39899	TI SPECIAL EVENTS REVENUES	550,000	550,000	-
350	398	39899	YBI SPECIAL EVENTS REVENUES	5,000	5,000	-
350	398	39899	TI COMMERCIAL REVENUES	600,000	475,000	(125,000)
350	398	39899	TI FILM REVENUES	25,000	25,000	-
350	398	39899	YBI FILM/CELLSITE REVENUES	15,000	15,000	-
350	398	39899	MARINA REVENUES	262,000	262,000	-
350	398	39899	TI HOUSING REVENUES	7,105,000	6,850,000	(255,000)
350	398	39899	YBI HOUSING REVENUES	775,000	1,050,000	275,000
				9,338,000	9,233,000	

"The Sharing Agreement"

Background

In 1999, TIHDI was approached by the Treasure Island Development Authority (TIDA) to ask if they could "borrow" some of the units allocated to TIHDI under the federally-mandated Legally Binding Agreement (LBA). Under the LBA, TIHDI was potentially to get 375 units out of a total 1,000. Of the 375, the City had the ability to exercise first use of 41 YBI units for five years.

Due to base redevelopment and Tidelands Trust issues, TIHDI could only get a maximum of a 15 year sublease with the City for housing. This lease term dramatically reduced the options for capital financing of the TIHDI units.

Meanwhile, due to environmental issues, TIDA was unable to access about 150 of the units designated for market rate housing. Within the context of developing a diverse socio economically integrated neighborhood, limited capital financing and the LBA provisions, TIHDI developed a "Sharing Agreement" with TIDA, allowing them to "borrow" units for the market rate housing.

The Sharing Agreement provides a revenue share to TIHDI of the income received by the 112 shared units and after 5 years, provides a revenue share of 41 YBI units. In addition, after the market rate lease with TIDA is over (7 or 8 years) the 112 units are to be "turned over" to TIHDI in habitable/move in condition.

Revenue Sharing

TIHDI receives a proportionate share of revenue received by TIDA for the rent of the borrowed units. There are three streams of revenue to be received:

- 1) Deferred Share: Revenue received by TIDA in first 3 years.
- 2) Current Share: Revenue received in current year up to 7 or 8 years of lease with market rate property management firm
- 3) 41 YBI: Revenue received by City in years 6 and after, up to 7 or 8 lease year.

Payments to TIHDI were to begin in the beginning of lease year 4.

City and County of San Francisco
Budget Year 2005-2006
Detail of Proposed Performance Measures

Dept: Treasure Island Development Authority
Program: Index Code 210016 Treasure Island Special Events & 210017 Yerba Buena Special Events
Goal: Earn \$550,000 (net) from short term facility rentals on Treasure Island and \$5,000 (net) Yerba Buena Island
Measure: Outcome – Earn \$555,000 from short-term facility rentals by June 2006

Definition of Measure: Earn \$550,000 (net) from short term facility rentals on Treasure Island and \$5,000 (net) Yerba Buena Island

Data Collection Method and Location of Documentation: Revenues recorded in FAMIS

Explanation of FY 2004-05 Projection: \$555,000 (net) was budgeted in FY2004-05 from short term facility rentals on Treasure Island and Yerba Buena Island. It is projected that approximately \$490,000 will be collected in FY2004-05 reflecting \$65,000 less than budgeted. Approximately \$482,000 was collected in FY2003-04.

Explanation of FY 2005-06 Target: Treasure Island is required to be self-supporting and make Treasure Island available to public. We project short-term rental of various facilities of \$555,000 to provide to fund TIDA's activities.

Controller's Comments:

Department's Comments:

City and County of San Francisco
Budget Year 2005-2006
Detail of Proposed Performance Measures

Dept: Treasure Island Development Authority
Program: Index Code 210018 Treasure Island Commercial Rentals
Goal: Earn \$475,000 (net) from long term facility rentals on Treasure Island and Yerba Buena Islands
Measure: Outcome – Earn \$475,000 from long term facility rentals by June 2006

Definition of Measure: Earn \$475,000 (net) from facility rentals on Treasure Island and Yerba Buena Islands

Data Collection Method and Location of Documentation: Based on actual leases

Explanation of FY 2004-05 Projection: \$600,000 was budgeted in FY2004-05 from facility rentals, which included \$180,000 projected from Caltrans that didn't transpire. It is projected that approximately \$536,000 will be collected in FY2004-05.

Explanation of FY 2005-06 Target: Treasure Island is required to be self-supporting and make Treasure Island available to public. Long-term rental of various facilities is counted on to provide \$475,000 to fund TIDA's activities.

Controller's Comments:

Department's Comments:

City and County of San Francisco
Budget Year 2005-2006
Detail of Proposed Performance Measures

Dept: Treasure Island Development Authority
Program: Index Code 210019 and 210020 Treasure Island and Yerba Buena Island Film and Cellsite Permits
Goal: Earn \$40,000 (net) from film permits and cellsite leases on Treasure Island and Yerba Buena Islands
Measure: Outcome – Earn \$40,000 from film permits and cellsite leases by June 2006

Definition of Measure: Earn \$40,000 from film permits and cellsite leases on Treasure Island and Yerba Buena Islands

Data Collection Method and Location of Documentation: Revenues recorded in FAMIS

Explanation of FY 2004-05 Projection: \$40,000 was budgeted in FY2004-05 from film permits and cell site leases on Treasure Island and Yerba Buena Islands. It is projected that approximately \$31,000 will be collected in FY2004-05.

Explanation of FY 2005-06 Target: Treasure Island is required to be self-supporting and make Treasure Island available to public. Film permits and cellsite leases are counted on to provide \$40,000 to fund TIDA's activities

Controller's Comments:

Department's Comments:

City and County of San Francisco
Budget Year 2005-2006
Detail of Proposed Performance Measures

Dept: Treasure Island Development Authority
Program: Index Code 210022 Treasure Island Housing 210023 Yerba Buena Housing
Goal: Earn \$7.9 million from lease of housing on Treasure Island and Yerba Buena Islands
Measure: Outcome – Earn \$7.9 million from lease of housing on Treasure Island and Yerba Buena Islands
by June 2006

Definition of Measure Earn \$7.9 million from lease of housing on Treasure Island and Yerba Buena Islands

Data Collection Method and Location of Documentation: Revenues recorded in FAMIS and projections and actuals from John Stewart & Company, who manages the residential housing on Treasure Island and Yerba Buena Island.

Explanation of FY 2004-05 Projection: \$7.88 million was budgeted in FY2004-05. It is projected that approximately \$7.9 million will be collected in FY2004-05.

Explanation of FY 2005-06 Target: Treasure Island is required to be self-supporting and make Treasure Island available to public. Housing leases are counted on to provide \$7.9 million to fund TIDA's activities

Controller's Comments:

Department's Comments:

City and County of San Francisco
Budget Year 2005-2006
Detail of Proposed Performance Measures

Dept: Treasure Island Development Authority
Program: Index Code 210021 Treasure Island Marina Rental
Goal: Earn \$262,000 from Treasure Island Marina Rentals
Measure: Outcome – Earn \$262,000 from Treasure Island Marina Rentals by June 2006

Definition of Measure: Earn \$262,000 from Treasure Island Marina Rentals

Data Collection Method and Location of Documentation: Revenues based on actual leases

Explanation of FY 2004-05 Projection: \$262,000 was budgeted for Treasure Island Marina Rentals

Explanation of FY 2005-06 Target: Treasure Island is required to be self-supporting and make Treasure Island available to public. Marina Rentals are counted on to provide \$262,000 to fund TIDA's activities.

Controller's Comments:

Department's Comments:



TREASURE ISLAND DEVELOPMENT AUTHORITY
City and County of San Francisco

Agenda Item No. 12

May 11, 2005

SUMMARY OF REQUESTED ACTION

Affirming the Authority's intent to address the transition of the agency's staff from under the auspices of the San Francisco Redevelopment Agency to some other, as yet unspecified, employment classification.

DISCUSSION

TIDA is in fact legally designated as an independent agency. Since its inception in the late '90s, and many times since then, the notion that TIDA would eventually become a stand-alone agency, with all of the relevant policies and procedures in place, has been repeatedly reaffirmed. To date, however, it has not had any direct employees of its own, relying instead on other agencies to provide an employment structure that could accommodate its dedicated staff.

From 1998 through 2003, this mayor's office provided that mechanism. Beginning in FY 2004-05, though, the burden shifted to the San Francisco Redevelopment Agency. At that time, it was noted that move to the SFRA would be temporary in nature, and "facilitate and expeditious and smooth transition of TIDA to a stand-alone status as a redevelopment agency with its own employees," according to a June 9, 2004 staff report (see attached) on the proposed agreement between TIDA and the SFRA

In the years since its inception, TIDA has made considerable progress in planning for the redevelopment of Treasure Island and in negotiating for conveyance of the land from the U.S. Navy. Indeed, the intent is for TIDA (not the City) to receive title to the land from the Navy. Staff believes that the project has evolved to a point where the redevelopment effort would be much more efficiently served by an independent agency to finalize conveyance of the property, manage the interim use and, ultimately, oversee the build out.

At present, TIDA is, in fact, performing many of the duties of an independent agency, relying on its own financial policies and procedures, purchasing policies and procedures, accounts payable services, general accounting services, independent audit coordination and employment tax filings. What it lacks are policies and procedures that relate directly to personnel.

While this may seem minor, allowing TIDA to develop these policies and procedures will achieve a level of administrative efficiency that will greatly benefit all of the project's stakeholders.

RECOMMENDATION

Staff recommends designating TIDA as the employer of record for purposes of carrying out its stated mission.

AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Meeting of June 9, 2004
Agenda Item # 10

Subject: Resolution Approving an Agency Agreement with the San Francisco Redevelopment Agency for the Provision of Staff Services to the Treasure Island Development Authority and the Termination of the Current Agency Agreement with the City of San Francisco

Contact/Phone: Annemarie Conroy, Executive Director
(415) 274-0660

SUMMARY OF PROPOSED ACTION:

Staff requests the Authority to adopt a resolution approving termination of the current Agency Agreement between the City of San Francisco and TIDA for the provision of staff support to TIDA and authorizing the Executive Director to enter into a new Agency Agreement with the San Francisco Redevelopment Agency to provide staff support to carry out the mission of the Treasure Island Development Authority.

DISCUSSION:

Since its inception, the Authority has not had any direct employees. TIDA has contracted with the City of San Francisco through an Agency Agreement for certain City employees (the "Project Office") to provide the staff support necessary for the Authority to fulfill its lawful purposes (the "Services"), pursuant to the terms and conditions of that certain Agency Agreement, by and between the City and the Authority dated February 1998 (the "City Agency Agreement").

The Authority is now considering hiring its own employees directly as a separate redevelopment agency under California law. To assist in that transition and to achieve certain administrative efficiencies, the current members of the Project Office are planning to become employees of the San Francisco Redevelopment Agency ("SFRA"). In that case, the Authority and the SFRA would need to enter into an agency agreement for the provision of the Services by the Project Office as agents of the Authority (the "SFRA Agency Agreement"). A substantially final form of the SFRA Agency Agreement is attached to the resolution as Exhibit A (the "SFRA Agency Agreement").

Staff believes that a transfer of employees to SFRA employment will facilitate an expeditious and smooth transition of TIDA to a stand alone status as a redevelopment agency with its own employees. Efforts with Calpers to enter into their system as an outside agency currently staffed by City employees have been lengthy, cumbersome and complicated. TIDA staff believes that the classification of current TIDA employees into the Calpers system at the SFRA will simplify the restructuring of TIDA with its own employees who will be covered under the same retirement and health benefit systems.

The key terms of the SFRA Agency are as follows:

- The SFRA, through the Project Office, will provide the Services to the Authority.
- The Authority will (i) reimburse the SFRA for one hundred percent (100%) of the salaries, overhead and fringe benefits of the Project Office (including credit for certain accrued City benefits such as accrued sick and vacation time), (ii) will pay the direct and indirect costs of the other SFRA employees who implement the SFRA Agency Agreement, and (iii) indemnify the SFRA from any claims related to the provision of the Services to the Authority.
- At least annually, the SFRA will notify the Authority of the costs of providing the Services as described above and the Authority shall include such amounts in its annual budget. If revenue and cost assumptions are met, the Authority's current budget should be adequate for the provision of the Services by the SFRA under the SFRA Agency Agreement for this fiscal year. If not, as noted in the staff summary related to the Budget, TIDA has certain other sources or revenues.
- The term is for an initial six months, month-to-month term thereafter, and terminable by either party on thirty (30) days prior notice, provided that any cumulative extension of the term of the SFRA Agency Agreement beyond one year shall require the prior approval of the Authority Board and the SFRA Commission.
- It is clearly understood that the arrangement to provide specified staff for the Project Office under the Agreement is temporary in nature until TIDA can form its own, stand alone agency directly hiring its own personnel and providing retirement and health benefits under the CalPers system.

RECOMMENDATION:

Staff recommends approval of the resolution and the authorization to enter into an Agency Agreement with the San Francisco Redevelopment Agency to provide staff to the Project Office and carry out the mission of TIDA. Prior to the effective date of the SFRA Agency Agreement, the Authority will need to terminate the City Agency Agreement.

[Reaffirming the Authority's intent to address transition to employment of its own staff.]

Resolution reaffirming the Authority's intent to address the transition to employment of the Authority's own staff.

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "TIDA") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the former Naval Station Treasure Island; and,; and

WHEREAS, Under the Treasure Island Conversion Act of 1997 (AB699), the California legislature, among other things, designated the TIDA as a redevelopment agency with all of the rights, powers, privileges, immunities, authorities, and duties granted to a redevelopment agency pursuant to the California Community Redevelopment Law, Health and Safety Code section 33000, et seq. (the "Law") upon approval of the Board of Supervisors; and,

WHEREAS, The Board of Supervisors approved the designation of TIDA as a redevelopment agency with powers over the former Naval Station Treasure Island in Resolution 43-98 on February 6, 1998; and,

WHEREAS, Under the California Redevelopment Law, TIDA has the authority to select, appoint and employ such permanent and temporary officers and employees as it requires and to determine their qualifications, duties, benefits and compensation, subject only to the conditions and restrictions imposed by the Board of Supervisors on the expenditure or encumbrance of budgetary funds appropriated to TIDA. (Section 33126 of the California Health and Safety Code.); and,

1 WHEREAS, Under Article V, Section 2 of TIDA's Bylaws, the TIDA Board of Directors
2 have the power to appoint and remove, at the pleasure of the Board, all of TIDA's officers,
3 agents, and employees; and,

4 WHEREAS, Until August 4, 2004, the Authority has not had any direct employees,
5 instead relying on certain City employees (the "Project Office") to provide the staff support
6 necessary for the Authority to fulfill its lawful purposes (the "Services"), pursuant to the terms
7 and conditions of that certain Agency Agreement, by and between the City and the Authority
8 dated February, 1998 (the "City Agency Agreement"); and,

9 WHEREAS, On June 9, 2004, this Board of Directors authorized the termination of the
10 City Agency Agreement and approved an Agency Agreement with the San Francisco
11 Redevelopment Agency (the "SFRA Agency Agreement") for the provision of staff services to
12 the Authority; and,

13 WHEREAS, The purpose of the SFRA Agency Agreement was to have members of the
14 Project Office temporarily become employees of the San Francisco Redevelopment Agency
15 while the Authority explored means of hiring directly its own employees as a separate
16 redevelopment agency under California law; and,

17 WHEREAS, The Authority Board of Directors wish to reaffirm its intent to address the
18 transition to employment of its own staff; now, therefore, be it

19 RESOLVED, That the Authority Board of Directors hereby reaffirms its intent address
20 transition to employment of its own staff.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on May 11, 2005.

Susan Po-Rufino, Secretary



Notes

TREASURE ISLAND DEVELOPMENT AUTHORITY
City and County of San Francisco

Agenda Item No. 13, 14, 15

May 11, 2005

Background

The Treasure Island Development Authority operated under the auspices of the Mayor's Office of Economic Development from its creation in February 1998 through June 2004, when it entered into a one-year operating agreement with the San Francisco Redevelopment Agency. Under that agreement, the 12 staff providing services to TIDA, under the general direction of TIDA Executive Director Tony Hall, are employed by the Redevelopment Agency. TIDA's agency agreement with the SFRA provides for a maximum duration of one year, until June 30, 2005, with further extension requiring the approval of the TIDA Board of Directors and the SFRA Commission.

Discussion

Working closely with San Francisco Deputy City Attorneys Donnell Choy and Larry Hecimovich, TIDA staff implemented the recommendations made in the agency audit undertaken by the Harvey M. Rose Accountancy Corp. with respect to TIDA's transition to an independent agency. These recommendations include conducting a needs assessment and developing possible alternatives to meet those needs.

Specifically, staff and counsel determined that an independent TIDA would need:

- Personnel policies
- A Human Resources and personnel management function
- A Labor Relations function to address union issues
- Payroll services
- Fiduciary, general and liability insurance, including workers' compensation insurance
- Financial policies and procedures
- Accounts payable services
- General accounting services
- Investment controls relating to potential surplus cash
- Independent audit coordination, and
- Employment tax and regulatory filings

Given these needs, staff and counsel developed three possible alternatives:

1. Continue to have staff employed by the San Francisco Redevelopment Agency;
2. Establish TIDA as the employer of record for staff providing services to TIDA; or

3. Contract with a Bay Area local government services organization ("LGSO") to provide personnel services similar to the services currently provided by the Redevelopment Agency.

A side-by-side comparison of these options is attached.

Option 1

Option 1 entails simply extending the existing agency agreement between TIDA and SFRA. Under this arrangement, the SFRA would continue to provide day-to-day administration of all personnel actions, labor relations, payroll services and employee-related insurance. TIDA would continue to be responsible for its financial policies and procedures, accounts payable services, general accounting services, investment of surplus cash, and independent audit coordination.

In exchange for these services over the coming fiscal year, TIDA would pay the SFRA an administrative fee of approximately \$189,000.

Advantages and Disadvantages

The primary benefit to TIDA of continuing the status quo would be continued access to the Redevelopment Agency's excellent services and highly qualified personnel. In addition, renewing the agency agreement would ensure that TIDA's labor agreements remain in place.

The key disadvantage is that maintaining the status quo merely delays TIDA's necessary development of personnel administration functions, while expending significant funds that could be devoted to that effort. In addition, the SFRA has provided the full year of service contemplated by the agreement, and has expressed reluctance as to the possibility of extending the agreement beyond a *de minimis* transition period.

Option 2

Under Option 2, TIDA would be established as the employer of record, directly employing its staff. In this scenario, in addition to maintaining the services that it already provides, TIDA would also take responsibility for the services currently provided by the SFRA, outlined above in Option 1.

Advantages and Disadvantages

There are several advantages to this model. First, it is the most cost effective, according to cost estimates prepared by TIDA Finance Officer John Farrell. (See attached side-by-side comparison.) We estimate that TIDA will require a part-time (10-20 hour / week) Human Resources and benefits administration function to meet most of its general needs in these areas. TIDA is currently looking to fill a recently vacated position encompassing day-to-day bookkeeping, auditing and office operations, and would look to add basic Human Resources and personnel functions to this position description. In conjunction

with this action, TIDA could outsource discrete HR, payroll and benefits administration functions to an Administrative Services Organization (ASO), at an estimated cost of \$15,000 per year.

A second major advantage of Option 2 is that it enhances the likelihood of a seamless transition of existing labor relationships as well as labor relations contracts (MOUs). If the Redevelopment Agency rolls over TIDA's existing staff to TIDA, TIDA can most likely adopt the MOUs currently governing these employees' terms and conditions of employment at the Redevelopment Agency or, if that is not possible, can reach relatively quick agreement with the employees' representatives to implement comparable agreements. In this way, TIDA can avoid or significantly reduce the substantial costs that TIDA would incur if a third-party employer were to take on existing TIDA staff and need to negotiate new agreements.

One disadvantage of Option 2 is that it may require some start-up costs to put the necessary administrative support network in place. However, those costs should be minimal and will largely involve the use of existing staff resources. A second disadvantage of this approach is that it might require a short-term extension of the existing agency agreement with the SFRA while an RFP for a qualified ASO is put out to bid and while other transition issues are addressed.

Option 3

Under Option 3, TIDA would enter into an agreement with a Local Government Services Organization (LGSO) to provide services that would meet all of the needs outlined above.

The principal advantage of Option 3 is that a qualified LGSO could provide a one-stop solution to TIDA's needs. In addition, the LGSO would assume liability for employment claims such as discrimination and wrongful termination, although related administrative costs such as arbitration fees would likely be passed through to TIDA.

The disadvantages primarily relate to cost. Our preliminary market analysis indicates that entering into a contract with a LGSO is the least cost-effective solution, with an attached price tag of approximately \$195,000 - \$210,000 annually over the term of any agreement. This cost far exceeds the cost of Option 1 or Option 2 and, unlike Option 2, does not diminish over time. This cost could not be defrayed through a reduction in TIDA staffing, since TIDA would still need to handle the ongoing audits of all vendors, leases, purchasing of supplies, internal bookkeeping and office management functions.

In addition, in the likely event that the unions currently representing staff assigned to TIDA seek representation of these individuals at the LGSO, TIDA could incur significant labor relations expenses associated with negotiating new MOUs.

Finally, as with continuing with the Redevelopment Agency, use of an LGSO maintains an extra layer of personnel management between the TIDA Board and Executive Director, on the one hand, and TIDA staff, on the other.

Recommendation

Based on the above analysis, TIDA staff recommends Option 2 – establishing TIDA as the employer of record for TIDA staff-- for the following reasons:

1. TIDA's employment of its own staff is the most cost-effective alternative.
2. TIDA's assumption of employer duties from the Redevelopment Agency enhances the likelihood of a seamless continuation of existing union relations.
3. TIDA's assumption of employer duties will enhance the solid working relationship between the Board of Directors and agency staff without introducing an additional layer of bureaucracy to meet the identified need.

RESOLUTION NO.

[Authorizing a new Agency Agreement with the San Francisco Redevelopment Agency.]

Authorizing the Executive Director to negotiate and execute a new Agency Agreement with the San Francisco Redevelopment Agency for the provision of staff services to the Treasure Island Development Authority for a 12 month period in substantially the form of the existing Agency Agreement for an annual administrative not to exceed \$189,000.

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and,

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated February 6, 1998; and,

1 WHEREAS, Until August 4, 2004, the Authority has not had any direct employees,
2 instead relying on certain City employees (the "Project Office") to provide the staff support
3 necessary for the Authority to fulfill its lawful purposes (the "Services"), pursuant to the terms
4 and conditions of that certain Agency Agreement, by and between the City and the Authority
5 dated February, 1998 (the "City Agency Agreement"); and,

6 WHEREAS, On June 9, 2004, this Board of Directors authorized the termination of the
7 City Agency Agreement and approved an Agency Agreement with the San Francisco
8 Redevelopment Agency (the "SFRA Agency Agreement") for the provision of staff services to
9 the Authority; and,

10 WHEREAS, The purpose of the SFRA Agency Agreement was to have members of the
11 Project Office temporarily become employees of the San Francisco Redevelopment Agency
12 while the Authority explored means of hiring directly its own employees as a separate
13 redevelopment agency under California law; and,

14 WHEREAS, This Board of Directors has determined that it is in the best interests of the
15 Authority to extend the SFRA Agency Agreement for another 12 months under the same
16 terms and conditions of the SFRA Agency Agreement for an annual administrative fee not to
17 exceed \$189,000; now therefore, be it,

18 RESOLVED, That the Authority hereby authorizes the Executive Director to negotiate
19 and execute a new Agency Agreement with the San Francisco Redevelopment Agency for the
20 provision of staff services to the Treasure Island Development Authority in substantially the
21 same for as the existing SFRA Agency Agreement for a 12 month term and an annual
22 administrative fee not to exceed \$189,000.

1 CERTIFICATE OF SECRETARY

2 I hereby certify that I am the duly elected Secretary of the Treasure Island
3 Development Authority, a California nonprofit public benefit corporation, and that the
4 above Resolution was duly adopted and approved by the Board of Directors of the
5 Authority at a properly noticed meeting on May 11, 2005.

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7 Susan Po-Rufino, Secretary
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Notes

[Authorizing Request for Proposals for staff services from Local Government Services Organizations.]

Resolution authorizing the Executive Director to issue a Request for Proposals from Local Government Services Organizations for the provision of staff services to the Treasure Island Development Authority.

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of Naval Station Treasure Island ("the Base") for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and,

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated February 6, 1998; and,

WHEREAS, Until August 4, 2004, the Authority has not had any direct employees, instead relying on certain City employees (the "Project Office") to provide the staff support

1 necessary for the Authority to fulfill its lawful purposes (the "Services"), pursuant to the terms
2 and conditions of an agreement between the City and the Authority; and,

3 WHEREAS, To achieve certain administrative efficiencies while the Authority explored
4 means of hiring directly its own employees as a separate redevelopment agency under
5 California law, in July, 2004, the Authority and the San Francisco Redevelopment Agency (the
6 "Agency") entered into an agreement (the "Agency Agreement") whereby the Agency
7 employed the Project Office to provide the Services; and,

8 WHEREAS, This Board of Directors has determined that the most expeditious way for
9 the Authority to become a stand alone redevelopment agency is to seek an agreement with a
10 Local Government Services Organization (LGSO) to provide services that would meet all of
11 the needs outlined in the staff memorandum dated May __, 2005 regarding TIDA Transition;
12 and,

13 WHEREAS, The Community Redevelopment Law (specifically, Sections 33126 and
14 33220 of the California Health and Safety Code) permits the Authority to enter into
15 agreements with any other public body respecting action to be taken pursuant to any of the
16 powers granted by the Community Redevelopment Law or any other law for the purpose of
17 aiding and cooperating in the planning, undertaking, construction, or operation of
18 redevelopment projects located within the area in which it is authorized to act; now, therefore
19 be it

20 RESOLVED, That the Authority hereby authorizes the Executive Director to issue a
21 Request for Proposals to Local Government Services Organizations for the provision of staff
22 services to the Authority.

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1 CERTIFICATE OF SECRETARY

2

3 I hereby certify that I am the duly elected and acting Secretary of the Treasure

4 Island Development Authority, a California nonprofit public benefit corporation, and

5 that the above Resolution was duly adopted and approved by the Board of Directors of

6 the Authority at a properly noticed meeting on May 11, 2005.

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9 Susan Po-Rufino, Secretary

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RESOLUTION NO.

[Authorizing the Executive Director to establish the Authority as employer of record of staff.]

Resolution authorizing the Executive Director of the Treasure Island Development Authority to take all actions necessary to (1) establish the Authority as the employer of record of all Authority staff, (2) negotiate a short-term extension of the Agency Agreement with the San Francisco Redevelopment Agency on a month-to-month basis not to exceed six months, (3) issue an RFP for payroll and administrative benefits functions to an Administrative Services Organization, and (4) effectuate a roll-over of existing Authority staff from the San Francisco Redevelopment Agency to direct employment at the Authority.

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "TIDA") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the former Naval Station Treasure Island; and,; and

WHEREAS, Under the Treasure Island Conversion Act of 1997 (AB699), the California legislature, among other things, designated the TIDA as a redevelopment agency with all of the rights, powers, privileges, immunities, authorities, and duties granted to a redevelopment agency pursuant to the California Community Redevelopment Law, Health and Safety Code section 33000, et seq. (the "Law") upon approval of the Board of Supervisors; and,

WHEREAS, The Board of Supervisors approved the designation of TIDA as a redevelopment agency with powers over the former Naval Station Treasure Island in Resolution 43-98 on February 6, 1998; and,

WHEREAS, Under the California Redevelopment Law, TIDA has the authority to select, appoint and employ such permanent and temporary officers and employees as it

1 requires and to determine their qualifications, duties, benefits and compensation, subject only
2 to the conditions and restrictions imposed by the Board of Supervisors on the expenditure or
3 encumbrance of budgetary funds appropriated to TIDA. (Section 33126 of the California
4 Health and Safety Code.); and,

5 WHEREAS, Under Article V, Section 2 of TIDA's Bylaws, the TIDA Board of Directors
6 have the power to appoint and remove, at the pleasure of the Board, all of TIDA's officers,
7 agents, and employees; and,

8 WHEREAS, Until August 4, 2004, the Authority has not had any direct employees,
9 instead relying on certain City employees (the "Project Office") to provide the staff support
10 necessary for the Authority to fulfill its lawful purposes (the "Services"), pursuant to the terms
11 and conditions of that certain Agency Agreement, by and between the City and the Authority
12 dated February, 1998 (the "City Agency Agreement"); and,

13 WHEREAS, On June 9, 2004, this Board of Directors authorized the termination of the
14 City Agency Agreement and approved an Agency Agreement with the San Francisco
15 Redevelopment Agency (the "SFRA Agency Agreement") for the provision of staff services to
16 the Authority; and,

17 WHEREAS, The purpose of the SFRA Agency Agreement was to have members of the
18 Project Office temporarily become employees of the San Francisco Redevelopment Agency
19 while the Authority explored means of hiring directly its own employees as a separate
20 redevelopment agency under California law; and,

21 WHEREAS, After exploring various alternatives, the Authority Board of Directors wish
22 to take steps to directly employ all Authority staff currently employed by the San Francisco
23 Redevelopment Agency; now, therefore, be it

24 RESOLVED, That the Authority Board of Directors hereby authorizes the Executive
25 Director to take all actions necessary to (1) establish the Authority as the employer of record

1 of all Authority staff, (2) negotiate and execute a short-term extension of the Agency
2 Agreement with the San Francisco Redevelopment Agency on a month-to-month basis not to
3 exceed six months, (3) issue an RFP for payroll and administrative benefits functions to an
4 Administrative Services Organization, and (4) effectuate a roll-over of existing Authority staff
5 from the San Francisco Redevelopment Agency to direct employment at the Authority; and be
6 it

7 FURTHER RESOLVED, That the Executive Director is directed to develop personnel
8 rules, regulations, and employment classifications for the Board of Directors' review and
9 approval.

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11 **CERTIFICATE OF SECRETARY**

12 I hereby certify that I am the duly elected Secretary of the Treasure Island
13 Development Authority, a California nonprofit public benefit corporation, and that the
14 above Resolution was duly adopted and approved by the Board of Directors of the
15 Authority at a properly noticed meeting on May 11, 2005.

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18 _____
19 Susan Po-Rufino, Secretary
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Notes



TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND

Draft Minutes of Meeting
Treasure Island Development Authority
May 11, 2005

City Hall, Room 400
1 Carlton B. Goodlett Place
San Francisco, CA

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1. **Call to Order:** 1:38 PM

Roll Call Present: Claudine Cheng (Chair)
 Susan Po-Rufino (Vice-Chair)
 Jesse Blout
 Matthew Franklin
 Marcia Rosen
 Supervisor Chris Daly

 Excused: Jared Blumenfeld
 John Elberling

Director Cheng requested the Board begin with Item 8

8. **Consent Agenda**

8(a) Director Po-Rufino requested that the April minutes be amended to reflect her request that Mexico provide a videotaped account of the restoration of the Covarrubias Murals

The April 11, 2005 minutes were motioned for approval by Director Po-Rufino
The motion was seconded by Director Blout
The minutes were approved unanimously as amended

8(b) Executive Director Hall introduced Consul General of Mexico Alfonso de Maria y Campos. Mr. Maria y Campos stated that this item requests that the Covarrubias murals be loaned to the Government of Mexico for restoration, using funds donated by Mr. Phil Hudner, and display in Mexico through 2006. Introduced Mr. Harry Parker, Director of the Fine Arts Museum of San Francisco

Mr. Harry Parker, Director of the Fine Arts Museums of San Francisco, stated the loan if significant works of art must be done carefully. FAM will provide oversight to the conservation process itself, using Head Conservator Carl Grimm. Stated FAM can also help with transport and proper display in Mexico. Stated FAM is also the vehicle for the funding and has been fortunate that the Charles and Frances Field Fund has taken an interest. Stated Phil Hudner, through a grant from the Field Fund, is the real mover behind this project and this project allows everyone collectively to rescue these works of art.

Mr. Peter Summerville, TIDA staff, stated that staff seconds Mr. Parker's remarks and also thanks the Field Fund and Mr. Hudner for his generosity and lifelong appreciation of Covarrubias.

Director Cheng motioned for approval of item 8(b)
Director Po-Rufino seconded the motion
The item was approved unanimously

Director Po-Rufino requested that Mexico and the Fine Arts Museum assist in trying to locate the missing mural listed in the staff summary

The remainder of the items on the consent agenda were motioned for approval by Director Po-Rufino
The motion was seconded by Director Blout
The remainder of the items on the consent agenda were approved unanimously

9. Establishing an Ad-Hoc Nomination Committee

Director Cheng stated that pursuant to TIDA bylaws, election of officers for the next year will be held at the June meeting. Motioned for establishment of an ad-hoc nomination committee to meet prior to the June meeting to nominate candidates for Board Officer positions. Asked Directors to submit recommendations to the Clerk of the Board. Named Directors Elberling, Po-Rufino and Blout to the nominating committee

Director Cheng motioned for approval of the item
Director Rosen seconded the motion
The motion was passed unanimously

10. Discussion and Review of TIDA Financial Audit Performed by Harvey M. Rose Accountancy Corporation

Mr. Ken Bruce, Harvey Rose Accountancy Corporation, presented the findings of the audit of TIDA's business condition. Provided review of TIDA funds, processes and internal controls. Presented page from City's consolidated financial report. Provided recommendations to TIDA staff based on their findings, 28 recommendations total.

Director Franklin asked if the current year is in or out of balance, since the first page of the report states the budget is out of balance.

Mr. Bruce stated that it now appears the budget is in balance based on the City's consolidated financial report.

Ms. Christine Martin, Harvey Rose Corporation, presented the audits findings on internal controls. Harvey Rose staff presented 28 recommendations, which is provided in the report.

Executive Director Hall stated this audit was a way to start with a clean piece of paper and stated that over half of the findings were already implemented

Director Blout asked staff to provide which recommendations have already been implemented

11. Approval of FY2005-2006 Treasure Island Development Authority Budget

Executive Director Hall presented the FY2005-06 TIDA Budget. Thanked Mr. John Farrell, TIDA Finance Director, for his work on the budget.

Director Franklin motioned that Item 11 be held and the Board now consider Items 13, 14 and 15

Director Cheng seconded the motion

The motion was approved unanimously

13, 14 & 15. (Called together)

Director Rosen asked the City Attorney if her multiple roles as a TIDA Director and Executive Director of the Redevelopment Agency provided any conflict of interest

Deputy City Attorney Choy stated that AB 699 exempts TIDA Directors who are also Department Heads from conflict of interest.

Director Rosen stated there is an error in the staff summary, and the Redevelopment Agency does not have a stated position on this staffing issue.

Deputy Director Frank Gallagher presented plans for staffing of TIDA. Presented analysis of the Agency's needs and options available for the Agency's transition. Work based on working relationship between TIDA staff, Mr. Choy and Larry Hecimovich from the City Attorney's Office. Options based on recommendations made by Harvey Rose audit. Three options before the Board are stay with the Redevelopment Agency, make TIDA an employer of record, or contract with an outside agency for staffing and agency services. Staff recommends establishing TIDA as an employer of record because it is the most efficient, cost effective and maintains a seat at the table for organized labor.

Director Rosen stated this is the first time she has seen Mr. Hecimovich and is only aware of one call made to the SFRA's Human Resources Department regarding TIDA staff transitioning out of SFRA employment. Stated that Human Resources is a sophisticated position. Stated that she is uncomfortable having this discussion with only four Directors present, especially with Director Elberling not being present, as he is a Director that has spoke to this independence item on numerous occasions. Stated she is reluctant to make this decision with only four Directors present and not having possible political support from the Mayor or Board of Supervisors. Asked if there is a way to continue this analysis and get input from stakeholders in the City family.

Director Blout stated this bucks a trend where City Departments look for efficiency and consolidation. Seconded Director Rosen's call for more thought and consideration.

Director Cheng stated she feels that a separate meeting may still be needed to work through these issues.

Director Franklin stated he would be in favor of examining other benefits that may be available by staying with the Redevelopment Agency. Stated he would also like more information on the backup of what is needed to implement these staffing and agency issues.

Executive Director Hall stated he was given clear direction by the Mayor as to where this Agency should go. Stated that the Board's responsibility is to provide direction. Staff needs to know what direction the Board wants the Agency to go in.

Director Rosen stated she does not believe there has been enough process put into making this decision. Would hate to take this action which might be changed later by the Board of Supervisors.

Director Cheng asked for advice from the City Attorney

Mr. Choy stated that a unanimous vote is needed to take an action. If the Board does not want to take an action, staff would want to approach the SFRA about extending the Agency Agreement before it expires.

Supervisor Daly stated that, without speaking for the whole Board, he feels the Board would be largely deferential to the wishes of the TIDA Board.

Director Franklin stated his concerns are the proposed HR position does not take into account the amount of time spent on HR matters, is too many areas of expertise for a mid-level job, and does not encapsulate the large amount of time normally spent on major HR issues that come up. Also stated he would like to see other advantages to the expertise in the Redevelopment Agency and asked if developing new policies and procedures the best way to go about doing things. Stated the key bodies to work on this are the Redevelopment Agency, TIDA staff and the Mayor's Budget Office. Stated there are issues besides dollars and cents with different structures.

Director Blout suggested that the three Items currently before the Board be tabled to the call of the chair in order to provide staff more time to analyze these issues. Also suggested that an item be placed on the calendar to continue the Agency Agreement on a month to month basis.

Director Cheng suggested that the Agency Agreement have a sunset date of three months

Public Comment:

Mr. Frank Martinez-Campo, SEIU 790, stated that the union has not had an opportunity to meet and confer and asked the Board meet its responsibility to have good paying jobs for hard-working workers.

Director Blout motioned to table Item 13 to the call of the chair

Director Franklin seconded the motion

The motion was approved unanimously

Director Blout motioned to table Item 14 to the call of the chair

Director Franklin seconded the motion
The motion was approved unanimously

Director Blout motioned to table Item 15 to the call of the chair
Director Franklin seconded the motion
The motion was approved unanimously

Director Po-Rufino left the Board at 2:30 PM

11. FY 2005-2006 TIDA Budget (Continued)

City Attorney Choy stated submitting a three month budget would not satisfy redevelopment law regarding budget submittal

Director Rosen stated that submittal of the budget does not preclude the budget being changed or altered once it has been submitted to the Mayor's Office

Public Comment:

Mr. Alan White encouraged the TIDA Board to look at ways to excite people over the potential of Treasure Island. Presented to the Board an idea for a flea market on Treasure Island.

Ms. Sherry Williams, Executive Director of TIHDI, stated that TIDA funding of TIHDI goes to operating the gymnasium as well as the Boys and Girls Club. Provided updated information on usage of the gymnasium, average monthly attendance at the gymnasium is approximately 2,000 people a month and the Boys and Girls Club serves at least 200 children.

Director Cheng requested a copy of the TIHDI budget at the last meeting

Director Rosen motioned for approval of the item
Director Franklin seconded the motion
The item was approved unanimously

12. Reaffirming the Authority's Intent to Address the Transition to Employment of its Employees

Director Blout motioned to table this item to the call of the chair
Director Franklin seconded the motion
The motion was approved unanimously

2. Executive Director's Report by TIDA Executive Director Tony Hall

Executive Director Hall discussed recent events on the Island, meetings held with the Navy, upcoming legislation affecting Treasure Island, and meetings held with various City departments.

3. Report by Mayor's Office of Base Reuse and Development

There was no report provided by the Office of Base Reuse and Development

4. Communications

Communications were received from the San Francisco Film Commission, Ms. Karen Knowles-Pearce, Ms. Johanna Wald & Ms. Arlene Rodriguez, the San Francisco Fire Department and the Federal Planning Division of the American Planning Association

5. Citizen Advisory Board Report

There was no CAB report due to the fact that all CAB officers were out of town

6. Ongoing Business by Directors

Director Rosen requested the meeting be adjourned in memory of former TIHDI Job Broker Bruce Franks who was recently killed

7. General Public Comment

Ms. Sherry Williams, TIHDI Executive Director, stated the SF Unified School District is looking at a proposal to close Treasure Island School. The School was slated to become a Dream School. The school is an important part of the Island community, especially for children who have had interrupted lives up to this date. Stated the School District is only looking at dollars and cents and a significant campaign will be needed to keep the school open. There are very few community resources on the Island and the school is it in a lot of ways. Community needs to work together to keep the school open. Approximately 130 of the children in the school are Island residents. Letters should be sent to the School District.

16. Discussion of Future Agenda Items by Directors

Director Cheng requested items at the June meeting addressing the letter from the San Francisco Film Commission regarding Rent Productions LLC and electing TIDA Board Officers for the upcoming year.

17. Adjourn

Director Rosen motioned for adjournment

Director Blout seconded the motion

The meeting was adjourned at 4:00 PM in memory of Mr. Bruce Franks



TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
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SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND

**TREASURE ISLAND DEVELOPMENT AUTHORITY
MEETING AGENDA**
June 8, 2005 1:30 P.M.

Room 400, City Hall
1 Dr. Carlton B. Goodlett Place

Gavin Newsom, Mayor

DIRECTORS

Claudine Cheng, Chair
Susan Po-Rufino, Vice-Chair
Jesse Blout
Jared Blumenfeld

John Elberling
Matthew Franklin
Marcia Rosen
Supervisor Chris Daly (*ex-officio*)

Tony Hall, Executive Director
Peter Summerville, Commission Secretary

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ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Report by the Executive Director (*Discussion Item*)
 - Public use, events and activities on Treasure Island
 - Commercial leasing
 - Bay Bridge/Caltrans/State issues
 - Treasure Island community news and issues
 - Legislative issues
 - Financial/Budget
 - Status of negotiations with U.S. Navy
 - Status of master development planning process
 - Requests for information by Directors
3. Report by Mayor's Office of Base Reuse and Development (*Discussion Item*)

4. Communications (*Discussion Item*)
 5. Report by the Treasure Island/Yerba Buena Island Citizen's Advisory Board (*Discussion Item*)
 6. Ongoing Business by Directors (*Discussion Item*)
 7. General Public Comment (*Discussion Item*) ***In addition to General Public Comment (Item #7), Public Comment will be held during each item on the agenda.***
-

8. **CONSENT AGENDA**

All matters listed hereunder constitute a Consent Agenda, are considered to be routine by the Treasure Island Development Authority Board and will be acted upon by a single vote of the Authority Board. There will be no separate discussion of these items unless a member of the Authority Board so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.

- a.) Approval of Minutes of May 11, 2005 Regular Meeting and May 5, 2005 Joint Meeting (*Action Item*)
 - b.) Resolution Authorizing the Executive Director to Execute the First Amendment to the Agreement with Rubicon Enterprises, Inc. to Provide Landscape and Grounds Maintenance Services and Extend the Term of the Agreement Through June 30, 2006 for An Amount Not to Exceed \$800,000 (*Action Item*)
 - c.) Resolution Authorizing the Executive Director to Execute the First Amendment to the Agreement with Toolworks, Inc. to Provide Janitorial and Building Maintenance Services and Extend the Term of the Agreement Through June 30, 2006 for an Amount Not to Exceed \$130,000 (*Action Item*)
 - d.) Resolution Authorizing the Executive Director to Amend the Contract with CH2M Hill to Extend the Term Thereof for an Additional Twelve Months for a Term Not to Exceed June 30, 2006 (*Action Item*)
 - e.) Authorizing the Executive Director to Execute a Sublease and Agreement with Catholic Charities, CYO for Use of Building 402 for the Use of the Gymnasium and the Provision of Recreational Programming Services for a Term Commencing July 1, 2005 and ending June 30, 2006 (*Action Item*)
 - f.) Resolution Authorizing the Executive Director to Execute an Amendment to the Contract with Seifel Consulting, Inc. to Extend the Term for an Additional 12 Months through June 30, 2006 (*Action Item*)
-

9. Resolution approving the election of officers of the Treasure Island Development Authority, as Nominated by the Ad Hoc Nominating Committee to Serve for a Twelve Month Term Beginning July 1, 2005 and Ending June 30, 2006 (*Action Item*)
10. Resolution Approving a Three Month Extension of the Agency Agreement with the San Francisco Redevelopment Agency for the Provision of Staff Services to the Treasure Island Development Authority (*Action Item*)
11. Discussion of the Proposed Closure of Treasure Island School by the San Francisco Unified School District (*Action Item*)
12. Discussion of Proposed Rent Credit to Rent Productions LLC for Use of Building 140 aka the Nimitz Conference Center (*Discussion Item*)
13. Discussion of Future Agenda Items by Directors (*Discussion Item*)
14. Adjourn

Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Development Authority Office, 410 Avenue of the Palms, Building 1, Treasure Island, and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.

Disability Access

The Treasure Island Development Authority holds its regular meetings at San Francisco City Hall. City Hall is accessible to persons using wheelchairs and others with disabilities. Assistive listening devices are available upon request. Agendas are available in large print. Materials in alternative formats and/or American Sign Language interpreters will be made available upon request. Please make your request for alternative format or other accommodations to the Mayor's Office on Disability 554-6789 (V), 554 6799 (TTY) at least 72 hours prior to the meeting to help ensure availability.

The nearest accessible BART station is Civic Center Plaza at the intersection of Market, Grove, and Hyde Streets. The accessible MUNI Metro lines are the J, K, L, M, and N (Civic Center Station or Van Ness Avenue Station). MUNI bus lines serving the area are the 47 Van Ness, 9 San Bruno, and the 6, 7, 71 Haight/ Noriega. Accessible curbside parking is available on 1 Dr. Carlton B. Goodlett Place and Grove Street. For more information about MUNI accessible services, call 923-6142.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based scented products. Please help the City to accommodate these individuals.

The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>





CRUZ M. BUSTAMANTE
Lieutenant Governor
State of California



May 31, 2005

Tony Hall
Executive Director
Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA 94130

Dear Tony:

I greatly appreciate all the good work by you and your staff on behalf of the effort to establish a grove on Yerba Buena Island in memory of Californians who have died in Iraq and Afghanistan. Your adroit handling of the emcee duties during the dedication ceremony lent considerable stature to the event.

My colleagues tell me we owe a particular debt of gratitude to D. J. Canepa and Frank Gallagher of your staff. They showed great resourcefulness as they made every effort to make the event a success. We work with people from many different organizations and rarely do we find individuals with such commitment and positive attitudes as those displayed by Mr. Canepa and Mr. Gallagher.

Too many people take for granted the arduous service of our troops in the Mideast. We had excellent media coverage of the dedication. Hopefully, this event helped raise some consciousness.

If I or any member of my staff can ever be of assistance to your endeavors in the future, please feel free to call upon us.

With warmest regards,


CRUZ M. BUSTAMANTE
Lieutenant Governor

Cc: D.J. Canepa
Frank Gallagher

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May 27, 2005



Claudine Cheng, President
TIDA Board of Directors
410 Avenue of Palms
Treasure Island
San Francisco, CA 94130

Dear Claudine Cheng,

I join with the Sierra Club in urging you to include a commitment to compact development and a walkable, bike-able, transit-oriented community, with the highest possible greenbuilding standards in the development of Treasure and Yerba Buena Islands.

I also urge you to support the Supervisors' Resolution 131-05, which encourages the SFPUC to explore the implementation of Community Choice Aggregation on the islands.

Sincerely,

Dennis Thomas
147 St. Germain Lane
Pleasant Hill, CA. 94523

Thomas
147 St. Germain Lane
Pleasant Hill, CA 94523



Claudine Cheng, President
TIDA Board of Directors
410 Avenue of Palms
Treasure Island
San Francisco, CA 94130

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Treasure Island Job Corps Center



655 H Avenue, Bldg. 442
Treasure Island
San Francisco, California 94130

Contract-DOLJ04SA00001
Control -73

phone: 415.277.2400
fax: 415.705.1776

 COPY

May 25, 2005

Michael Burns, Executive Director
MUNI
1151 Market Street
San Francisco, CA 94102



Dear Director Burns:

I am writing to express my concerns at the re-routing of bus number 108 on Treasure and Yerba Buena Islands. The new route began recently without warning or notice. Treasure Island Job Corps has 800 trainees and 300 staff many of whom use public transportation to and from the island. Passengers only learned of the route change on the day it happened.

Bus 108 now climbs onto Yerba Buena Island via Macalla Road. Macalla Road is very narrow and can barely accommodate a large city bus. To make matters worse the road is in complete shade and has continuous running water creating a slippery surface. Treasure Island Job Corps trainees and staff are concerned with the safety of this new route and would like to request that the previous route be adopted once again.

I have spoken with other agencies on the island and know that they share my concerns. I am urging you to reconsider the route changes and to meet with island agencies and community members to discuss the changes. I would like to request that in future when changes are planned a MUNI representative attend the monthly Treasure Island community meetings held on the 3rd Wednesday of each month at 6:30pm in the Ship Shape Building on Treasure Island to brief the community and get feedback.

Yours sincerely,

Melanie Radford
Center Director

cc: Clyde Jasper
Sergei Davidenkoff
Tony Hall ✓

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877-229-9257 Toll-free



May 23, 2005

Tony Hall, Director
Treasure Island Development Authority
410 Palm Avenue
Building 1, 2nd Floor
Treasure Island
San Francisco, Ca 94130

Dear Mr. Hall:

We had the pleasure of touring Treasure Island on April 27th and again on May 12, 2005. Frishtah Afifi, gave us our guided tour on the bus which was great. Our groups were seniors from Santa Rosa.

Many of the seniors were happy to stay on the bus due to the inability to walk too much or too far. We did however leave the bus for a short time to enter the lobby of your building to view the beautiful mural which was extremely wonderful and awesome.

Once on the bus Frishtah gave us a tour of Treasure Island, that gave us information on a little of the past history and much of the future plans. Several of the seniors on the bus had attended the World's Fair and a few of the men had been stationed on Treasure Island during the war. So this was an exciting trip for everyone.

Treasure Island gives off a spectacular view of San Francisco and the Oakland side of the bay. All of this was extremely enjoyed. We certainly wouldn't mind if you charged \$5.00 or \$10.00 a person for the tour and give us a little more time and more of an extensive history, since there is so much to Treasure Island's history and the bay area, seen from the Island. All of this is fascinating and Frishtah does a wonderful job of explaining the history that she does have. Maybe with a charge, you could have a step on guide to give us the longer tour like the City has with its tours, and again as I stated we wouldn't mind paying for the tour and could make it about 40 minutes since there is so much to see and hear about, especially the fascinating history.

After our beautiful tour we went to the Job Core Culinary Academy for a wonderful lunch. We are most grateful for this opportunity of touring Treasure Island and thank you for making it possible. I know when construction begins on renovating Treasure Island; tours will no longer exist, so this is a most wonderful chance for people to see it all. I hope it will continue for a long time and look forward to returning again with another group in the future.

And, a special thank you to Ms. Afifi for her time and wonderful narration on Treasure Island, she was most pleasant and cordial.

Very Sincerely,

A handwritten signature in cursive script that reads "Arlene Cervelli". The ink is dark and the signature is fluid, with a large, stylized 'C' at the end.

Arlene Cervelli
Director of Marketing and Sales
Thunderstar

Join us for a Community Workshop on Treasure Island's Redevelopment

Sponsored by the Treasure Island/Yerba Buena Island Citizen's Advisory Board, The Treasure Island Development Authority, The Mayor's Office of Base Reuse and Development and Treasure Island Community Development

Tuesday, June 14, 2005
5:30 PM Registration and Sign In
6:00-8:00 PM Workshop
Port of San Francisco, Bayside Conference Room
Pier 1, The Embarcadero
San Francisco



Over the past several years, the CAB, TIDA, Mayor's Office, members of the public, and TICD have been working on planning for the redevelopment of Treasure Island, translating the goals and objectives outlined in the 1996 Reuse Plan and the broad planning principles of the proposed master plan into more detailed plans. The current plan implements sustainability commitments and envisions a new scale and character for a mix of uses. This public meeting will provide a substantive forum to engage community members in the ongoing discussions and seek suggestions for realizing Treasure Island as a sustainable, pedestrian-friendly, and feasible community and regional destination.

The agenda includes:

- A. An update on the status of the planning process
- B. Workshop discussion of key design issues including intensity of development, heights and character, sustainability, and pedestrian-friendly design concepts
- C. Report back of findings from each of the working groups

This workshop is open to the public, and all interested parties are encouraged to participate.

For further information, please contact:

Jack Sylvan, Mayor's Office of Base Reuse and Development
415-554-5201

NOTICE OF SPECIAL MEETING OF TIDA BOARD OF DIRECTORS AND TI/YBI CITIZEN'S ADVISORY BOARD

The purpose of this meeting is to invite public input on key design issues of the future redevelopment of Treasure Island and Yerba Buena Islands. Members of the Treasure Island Development Authority Board of Directors and TI/YBI Citizen's Advisory Board (CAB) may be in attendance to observe and participate in the meeting at the time and place indicated above. The only items to be discussed at this meeting are those matters listed in this invitation. No action of the Authority Board or TI/YBI CAB will be taken at this meeting. Opportunity for public comment will be provided and encouraged through the process and program of the Community Workshop.

Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at soft@sfgov.org.

Treasure Island Development Authority
410 Avenue of Palms, Building 1, 2nd Floor
Treasure Island
San Francisco, CA 94130

The regular meetings of the Treasure Island Development Authority are held the 2nd Wednesday of each month at 1:30 p.m. in Hearing Room 400 in City Hall, 1 Dr. Carlton B. Goodlett Place. The next regular meeting is Wednesday, June 8, 2005.

AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Subject: Resolution Authorizing the Executive Director To Execute the First Amendment to the Contract with Rubicon Enterprises, Inc. for Landscaping and Grounds Maintenance Services for An Amount Not to Exceed \$800,000

Agenda Item No.8(b)
Meeting of June 8, 2005

Contact/Phone: Marc McDonald
(415) 274-0660

BACKGROUND

Landscaping and grounds maintenance services are required to fulfill the requirements of the agreement for caretaker services between the Authority and the Navy (the "Cooperative Agreement"), as well as to promote public health and safety at former Naval Station Treasure Island.

Rubicon Enterprises, Inc. (Rubicon), a member organization of the Treasure Island Homeless Development Initiative (TIHDI), is a non-profit agency organized to provide services to train homeless and other economically disadvantaged persons for jobs. One of its programs is contractual landscaping and grounds maintenance services. These are identified in the draft Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans. The Authority's Purchasing Policy and Procedures allow for noncompetitive negotiations in furtherance of the Homeless Assistance Agreement between the Authority and TIHDI, including TIHDI member organizations.

On September 1, 2004, Treasure Island Development Authority entered into an agreement with Rubicon to provide landscaping services at Treasure Island for a ten month term commencing on September 1, 2004 and expiring on June 30, 2005. Compensation for the ten month term was established at \$800,000 or \$80,000 per month. Staff wishes to extend the contract for a term of 1 year, commencing July 1, 2005 and expiring on June 30, 2006. Compensation for the 12 month term will be \$800,000 or \$66,667 per month. Rubicon has agreed to continue to provide the same level of service called for in the September 1, 2004 contract for this reduced cost. This represents a savings of \$13,333.00 per month.

RECOMMENDATION

Staff recommends approval of the contract for landscaping and grounds maintenance services with Rubicon from July 1, 2005 through June 30, 2006 for an amount not to exceed \$800,000.

EXHIBITS

- A. Contract with Rubicon Enterprises, Inc.
- B. First Amendment to Contract with Rubicon Enterprises, Inc.

1 [Rubicon Contract]

2 AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE FIRST AMENDMENT TO
3 THE AGREEMENT WITH RUBICON ENTERPRISES, INC. TO PROVIDE LANDSCAPE AND
4 GROUNDS MAINTENANCE SERVICES AND EXTEND THE TERM OF THE AGREEMENT
5 THROUGH JUNE 30, 2006 FOR AN AMOUNT NOT TO EXCEED \$800,000.

6 **WHEREAS**, Naval Station Treasure Island is a military base located on Treasure
7 Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United
8 States of America ("the Federal Government"); and,

9 **WHEREAS**, The Base was selected for closure and disposition by the Base
10 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
11 subsequent amendments; and,

12 **WHEREAS**, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
13 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
14 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
15 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
16 conversion of the Base for the public interest, convenience, welfare and common benefit of
17 the inhabitants of the City and County of San Francisco; and,

18 **WHEREAS**, Under the Treasure Island Conversion Act of 1997 (the "Act"), which
19 amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to
20 Chapter 1333 of the Statutes of 1968, the California Legislature (i) designated the Authority as
21 a redevelopment agency under California redevelopment law with authority over the Base
22 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the
23 Base which are subject to Tidelands Trust, vested in the Authority the authority to administer
24 the public trust for commerce, navigation and fisheries as to such property; and
25

1 **WHEREAS**, On February 6, 1998, the Board of Supervisors adopted Resolution No.
2 43-98 approving the designation of the Authority as a redevelopment agency for Treasure
3 Island and Yerba Buena Island; and,

4 **WHEREAS**, The Authority has negotiated and endorsed a proposed Base Closure
5 Homeless Assistance Agreement and Option to Lease Real Property (the "Homeless
6 Assistance Agreement") with the Treasure Island Homeless Development Initiative, a
7 consortium of nonprofit corporations organized ("TIHDI") to utilize the resources of the Base to
8 help fill gaps in the continuum of care for homeless persons and families, pursuant to the
9 Base Closure Community Redevelopment and Homeless Assistance Act of 1994 [check
10 accuracy of title]; and,

11 **WHEREAS**, The Authority wishes to support TIHDI pursuant to the Base Closure
12 Community Redevelopment and Homeless Assistance Act of 1994; and,

13 **WHEREAS**, Rubicon Enterprises, Inc. is a California nonprofit public benefit
14 corporation and a member organization of TIHDI, and Rubicon Enterprises, Inc. has
15 represented and warranted that it is qualified to perform the landscaping and other ground
16 maintenance services required by the Authority as set forth under this Contract; and,

17 **WHEREAS**, The Authority's purchasing policy and procedures authorize non-
18 competitive negotiations for contracts in furtherance of the Homeless Assistance Agreement;
19 and,

20 **WHEREAS**, On September 1, 2004, the Authority and Rubicon Enterprises, Inc.
21 entered into an agreement for landscaping and other ground maintenance services on the
22 former Base (the "Agreement"); and,

23 **WHEREAS**, The Authority negotiated and the TIDA Board approved an Agreement
24 dated September 1, 2004, with Rubicon Enterprises, Inc. on the scope of work, and budget for
25 such services as shown in Exhibit A to this resolution; and,

WHEREAS, The Authority has negotiated the First Amendment to the Agreement, which amends the budget for such services as shown in Exhibit B to this resolution; now, therefore be it

RESOLVED, That the Authority hereby authorizes the Executive Director of the Authority to execute the First Amendment to the Agreement, to extend the term of the Agreement to June 30, 2006 for an amount not to exceed \$800,000 to provide landscaping and grounds maintenance services for the Authority at former Naval Station Treasure Island and that the form of the First Amendment to the Agreement shall be substantially as shown on Exhibit B attached to this resolution..

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 8, 2005.

Susan Po-Rufino, Secretary

EXHIBIT A BUDGET

For an amount not to exceed \$80,000.00 per month, or \$800,000 for 10 months, Contractor will

provide the following:

		SERVICE	10 months
PARCEL	DESCRIPTION	LEVEL	FY04
parcel 1	bldg 1, tourist stop, causeway	1	\$29,205
parcel 1A	bldg 180	1	7,123
parcel 2	bldg 2	1	18,088
parcel 3	bldg 3	1	7,450
parcel 4	pier 1	3	1,277
parcel 5	Calif. between M&I	2	4,096
parcel 6	picnic area tennis courts	3	7,387
parcel 6A	baseball field	3	2,609
parcel 6B	bldg 233 lift station surrounds	3	3,457
parcel 7	bldg 92 & surrounds	3	16,977
parcel 8	bldg 99, 29, & surrounds	3	12,558
parcel 9	demolition site		
parcel 10	legal bldg & surrounds	2	17,625
parcel 11	Job Corps		
parcel 12	post office	3	4,839
parcel 13	dog park site/playing fields	1	46,174

1	parcel 14	star barracks	2	26,035
2	parcel 15	great lawn casa chapel	1	110,480
3		library		
4	parcel 16	Nimitz conference center	2	17,144
5	parcel 17	TIHDI childcare center		
6	parcel 18	navy exchange	3	1,610
7	parcel 18A	CEC laydown		
8	parcel 18B	bldg 257	3	4,371
9	parcel 19	old brig	3	7,821
10	parcel 19A	field		
11	parcel 20	elementary school		
12	parcel 21	See adjunct item		
13	parcel 21A	See adjunct item		
14	parcel 22	fire school	3	1,807
15	parcel 23	PUC	3	4,129
16	parcel 24	brig	1	7,740
17	parcel 25	gas station	3	1,911
18	parcel 26	sewage treatment		
19	parcel 27	area near Austin Hall	1	1,811
20	parcel 27A	Austin Hall & surrounds	3	
21	parcel 28A	housing ir sites		
22	parcel 28B	housing ir sites		
23	parcel 29	auto hobby shop	3	2,473
24				
25	YERBA BUENA ISLAND			

1	Captains Park		1	7,077
2	quarters 1	Nimitz House	2	5,699
3	quarters 2-7	great whites	2	14,667
4	quarters 61		1	2,867
5	quarters 62			6,471
6	quarters 240			6,945
7				
8	SUBTOTAL			\$409,923

9

10 **Adjunct Work**

11 **Items**

12	item 1	fire breaks	38,087
13	item 2	outer seawall	10,473
14	item 3	inner seawall	6,325
15	item 4	garbage & tourist stop	12,789
16	item 5	TI garbage cans	10,643
17	item 6	poison oak	1,266
18	item 7	annual planting &	19,463
19		maintenance	
20	item 8	diseases & insects	1,586
21	item 9	storm damage clean-up	25,365
22	item 10	inventory housing (parcel	11,109
23		28)	
24	item 11	reservoir maintenance	15,821
25	item 12	pump station	4,153

1		maintenance	
2	item 13	parcel 21	10,705
3	item 14	parcel 21A gym &	16,253
4		surrounds	
5	item 15	parcel 27A	4,669
6	Subtotal		188,707
7			
8	TOTAL		\$598,630
9	Additional Services		\$201,370
10	CONTRACT MAXIMUM		\$800,000

Written authorization is required to expend funds allocated for additional landscape services and playground rehabilitation services.

EXHIBIT B BUDGET

For an amount not to exceed \$66,667.00 per month, or \$800,000 for 12 months, Contractor will

provide the following:

		SERVICE	12 months
PARCEL	DESCRIPTION	LEVEL	FY05
parcel 1	bldg 1, tourist stop, causeway	1	\$29,205
parcel 1A	bldg 180	1	7,123
parcel 2	bldg 2	1	18,088
parcel 3	bldg 3	1	7,450
parcel 4	pier 1	3	1,277
parcel 5	Calif. between M&I	2	4,096
parcel 6	picnic area tennis courts	3	7,387
parcel 6A	baseball field	3	2,609
parcel 6B	bldg 233 lift station surrounds	3	3,457
parcel 7	bldg 92 & surrounds	3	16,977
parcel 8	bldg 99, 29, & surrounds	3	12,558
parcel 9	demolition site		
parcel 10	legal bldg & surrounds	2	17,625
parcel 11	Job Corps		
parcel 12	post office	3	4,839
parcel 13	dog park site/playing fields	1	46,174
parcel 14	star barracks	2	26,035
parcel 15	great lawn casa chapel library	1	110,480
parcel 16	Nimitz conference center	2	17,144

1	parcel 17	TIHDI childcare center		
2	parcel 18	navy exchange	3	1,610
3	parcel 18A	CEC laydown		
4	parcel 18B	bldg 257	3	4,371
5	parcel 19	old brig	3	7,821
6	parcel 19A	field		
7	parcel 20	elementary school		
8	parcel 21	See adjunct item		
9	parcel 21A	See adjunct item		
10	parcel 22	fire school	3	1,807
11	parcel 23	PUC	3	4,129
12	parcel 24	brig	1	7,740
13	parcel 25	gas station	3	1,911
14	parcel 26	sewage treatment		
15	parcel 27	area near Austin Hall	1	1,811
16	parcel 27A	Austin Hall & surrounds	3	
17	parcel 28A	housing ir sites		
18	parcel 28B	housing ir sites		
19	parcel 29	auto hobby shop	3	2,473
20				
21	YERBA BUENA ISLAND			
22	Captains Park		1	7,077
23	quarters 1	Nimitz House	2	5,699
24	quarters 2-7	great whites	2	14,667
25	quarters 61		1	2,867

1	quarters 62	6,471
2	quarters 240	6,945
3		
4	SUBTOTAL	\$409,923
5		
6	Adjunct Work Items	
7	item 1 fire breaks	38,087
8	item 2 outer seawall	10,473
9	item 3 inner seawall	6,325
10	item 4 garbage & tourist stop	12,789
11	item 5 TI garbage cans	10,643
12	item 6 poison oak	1,266
13	item 7 annual planting & maintenance	19,463
14	item 8 diseases & insects	1,586
15	item 9 storm damage clean-up	25,365
16	item 10 inventory housing (parcel 28)	11,109
17	item 11 reservoir maintenance	15,821
18	item 12 pump station maintenance	4,153
19	item 13 parcel 21	10,705
20	item 14 parcel 21A gym & surrounds	16,253
21	item 15 parcel 27A	4,669
22	Subtotal	\$188,707
23		
24	TOTAL	\$598,630
25	Additional Services	\$201,370

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CONTRACT MAXIMUM

\$800,000

Written authorization is required to expend funds allocated for additional landscape services and playground rehabilitation services

Level 1 Task Summary **Frequency / Year**

Policing	52
Mowing	43
Edging/Trimming	43
Fertilization	as needed
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	3 times PLUS spot spraying as needed
Storm Damage Cleanup	as needed
General Debris Pick-up	as needed
Hand irrigation	54

These frequencies are average, projected amounts of service that are projected to provide the standard of maintenance described above. Depending on overall weather patterns, and associated plant responses, some tasks may be performed more times than shown and others less times than shown.

Level 2 Services

Turf Grass Mowing and Associated Cleanup: Turf areas shall be mowed an average of two times per month. Turf grass height shall be maintained between 2 inches and 4 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers, and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair or replace any items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, and other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed on once per month. Tree wells shall be maintained around all trees and large shrubs growing in lawn and turf areas. All clippings shall be cleared from walkways, roadways, and other paved areas.

Trees and Shrubs: All trees and shrubs shall be pruned to provide safe passage, maintain a healthy and pleasing appearance, and prevent interference with pedestrian and vehicular traffic. Trees and shrubs shall be treated as necessary to prevent disease, fungus, and insect damage. Any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

Irrigation: Irrigation shall be performed in a manner that promotes good appearance of landscaped areas. Irrigation shall include the watering of lawns, shrubs, tree, ground cover and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses that are used for watering and all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment.

Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining any repairing any underground piping located more than one foot from any sprinkler head.

Weed Control In Paved Areas: Weeds shall be removed from all asphalt and other

Paved areas. Herbicides shall be applied to prevent re-growth.

Pelicing, Debris Removal, and Storm Damage Cleanup: All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

Playground, Sandboxes, Ball Fields, and Tennis Courts: Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

<u>Level 2 Task Summary</u>	<u>Frequency / Year</u>
Policing	24
Mowing	24
Edging/Trimming	24
Fertilization	0
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	0
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	36

These frequencies are average projected amounts of service that we feel will be required to provide the standard of maintenance described above. Depending on overall weather patterns and associated plant responses we may perform some tasks more times than shown and others less times than shown.

Level 3 Services

Mowing and Associated Cleanup: Grass and weeds shall be cut 16 times per year. Prior to mowing, all trash and debris, including leaves, paper and other objects within the maintenance area shall be removed. Grass/weeds shall be maintained at a uniform height Of not less than 2” and not more than 5”.

Trees and Shrubs: All trees and shrubs shall be pruned as required to encourage proper health and to maintain a pleasing appearance. Any extensive pruning or “cut back” shall be accomplished in the winter or during the dormant season. Ivy and ground cover shall be kept a

minimum of eight inches (8") from shrubs and trees. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

Weed Control In Paved Areas: Weeds shall be removed from all asphalt and other paved areas four times per year. Herbicides shall be applied to prevent re-growth.

Policing, Debris Removal, and Storm Damage Cleanup: All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

Playgrounds, Sandboxes, Ball Fields, and Tennis Courts: Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a month to remove foreign objects.

Irrigation: Level 3 areas shall not include any irrigation

Miscellaneous Specifications

Firebreak Requirements: Certain areas on Yerba Buena Island shall be maintained as firebreaks in the following manner as directed by the Division of Fire Prevention and Investigation San Francisco Fire Department.

All buildings under the care and management of the City of San Francisco shall have the areas around them cleared to a distance of a minimum of thirty (30) feet. All roadways on City property shall have the areas on either side of them cleared to a distance of at minimum of 10 feet. The cleared areas shall be kept free of combustible materials such as dry weeds, shrubs, trash, and fallen debris from trees. Normal leaf and pine needle accumulation shall not be removed. Weeds shall be cut or mowed to a maximum height vegetation remains green throughout the year and presents little or no fire hazard shall be left alone. Any vegetation obstructing roadways or growing against buildings shall be removed as directed by the Facilities Manager. Removal of any trees over 4 inches in diameter or over 12 feet high within the fire break areas shall only be performed as additional work under a separate agreement.

Sea Wall Requirements: The sea wall is defined as the flat area adjacent to the rock revetment that comprises the perimeter of Treasure Island. From the end of Palm Avenue at 9th Street the sea wall runs around the housing area and returns to the harbor behind Building 1. Weeds in this area shall be kept at a height of 4 inches or less by means of mechanical and chemical control. Trash shall be removed once per month. Any debris that occurs in other areas along the sea wall shall be the responsibility of others unless negotiated as extra work separate from this agreement.

Storm Drains Requirements for Both Islands: Storm drains and V ditches shall be cleaned as often as necessary during the rainy season in to keep them clear of debris.

Garbage Cans and Tourist Stop at Front Gate: Garbage cans shall be emptied 3 times per week. The tourist parking area and sidewalk at the front gate shall b swept or blown Monday through Friday.

For any questions, to report damages, or problems, contact the Mayor's Treasure Island Project Office:

Lori Mazzola, Special Events Coordinator, tel: 274-0312

Deputy Executive Director or Facilities Manager, tel:274-0660

**City and County of San Francisco
TREASURE ISLAND DEVELOPMENT AUTHORITY
San Francisco, California 94130**

**Agreement between the
Treasure Island Development Authority and**

RUBICON ENTERPRISES, INC.

This Agreement is made this first day of September 2004, in the City and County of San Francisco, State of California, by and between Rubicon Enterprises, Inc., a California nonprofit corporation and a member organization of the Treasure Island Homeless Development Initiative, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a municipal corporation, hereinafter referred to as "Authority," acting by and through its Executive Director, hereinafter referred to as "Executive Director."

Recitals

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and

WHEREAS, It is necessary to provide grounds maintenance services to fulfill the requirements of the Authority's contract with the United States Navy for caretaker services on former naval base Treasure Island, and to promote public health and safety on Treasure Island; and

WHEREAS, the Authority wishes to support the Homeless Assistance Component of the Treasure Island Reuse Plan; and

WHEREAS, the Contractor is a member of the Treasure Island Homeless Development Initiative; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the grounds maintenance services required by the Authority as set forth in this Agreement; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for janitorial services shown in Appendix A; and

WHEREAS, approval for said Agreement was obtained from the Board of Supervisors by Resolution No. 672-96, dated July 1, 1997;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("City"). Charges will accrue only after prior written authorization certified by the City's Controller ("Controller"), and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority and/or City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

The Authority and/or City have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority and/or City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from September 1, 2004 to June 30, 2005.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed eight hundred thousand dollars (\$800,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Authority as being in accordance with this Agreement. Authority and/or City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority and/or City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

(a) The Authority and/or City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of the Authority and/or City are not authorized to request, and the Authority and/or City is not required to reimburse the Contractor for Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of the Authority and/or City are not authorized to offer or promise, nor is the Authority and/or City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Authority. All amounts paid by Authority and/or City to Contractor shall be subject to audit by Authority and/or City.

Payment shall be made by Authority and/or City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Authority and/or City for three times the amount of damages which the Authority and/or City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority and/or City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority and/or City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority and/or City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority and/or City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority and/or City; (c) conspires to defraud the Authority and/or City by getting a false claim allowed or paid by the Authority and/or City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority and/or City; or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority and/or City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority and/or City within a reasonable time after discovery of the false claim.

9. Disallowance

If Contractor claims or receives payment from Authority and/or City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to Authority and/or City upon Authority and/or City's request. At its option, Authority and/or City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes

(a) Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

(b) Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority and/or City property for private gain. If such a possessory interest is created, then the following shall apply:

(i) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

(ii) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority and/or City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

(iii) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(iv) Contractor further agrees to provide such other information as may be requested by the Authority and/or City to enable the Authority and/or City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority and/or City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and/or City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority and/or City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority and/or City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

Authority and/or City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority and/or City.

14. Independent Contractor; Payment of Taxes and Other Expenses

(a) **Independent Contractor:** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority and/or City under this Agreement. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and/or City and Contractor, or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority and/or City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority and/or City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

(b) **Payment of Taxes and Other Expenses:** Should Authority and/or City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority and/or City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority and/or City, upon notification of such fact by Authority and/or City, Contractor shall promptly remit such amount due or arrange with Authority and/or City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority and/or City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority and/or City's financial liability so that Authority and/or City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

(a) Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(b) Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the Authority and the City and County of San Francisco, their Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(c) All policies shall provide thirty (30) days' advance written notice to Authority and/or City of cancellation mailed to the following address:

Treasure Island Development Authority
Treasure Island Building One
410 Palm Avenue
San Francisco, CA 94130

(d) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(f) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority and/or City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority and/or City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(g) Before commencing any operations under this Agreement, Contractor must furnish to Authority and/or City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to Authority and/or City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Authority and/or City request.

(h) Approval of the insurance by Authority and/or City shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless Authority and/or City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Authority and/or City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority and/or City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and/or City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify Authority and/or City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and/or City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and/or City and continues at all times thereafter.

Contractor shall indemnify and hold Authority and/or City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority and/or City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Authority and/or City may have under applicable law.

18. Liability of Authority and/or City

AUTHORITY AND/OR CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY AND/OR CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left blank by agreement of the parties

20. Default; Remedies

(a) Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, or 50.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from Authority and/or City to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of

Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.

- (4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

(b) On and after any Event of Default, Authority and/or City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority and/or City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority and/or City on demand all costs and expenses incurred by Authority and/or City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority and/or City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and/or City and Contractor all damages, losses, costs or expenses incurred by Authority and/or City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

(c) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

(a) Authority and/or City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority and/or City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

(b) Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and/or City and to minimize the liability of Contractor and Authority and/or City to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority and/or City. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority and/or City.

- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At Authority and/or City's direction, assigning to Authority and/or City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority and/or City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to Authority and/or City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work which Authority and/or City designates to be completed prior to the date of termination specified by Authority and/or City.
- (7) Taking such action as may be necessary, or as the Authority and/or City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority and/or City has or may acquire an interest.

(c) Within thirty (30) days after the specified termination date, Contractor shall submit to Authority and/or City an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work Authority and/or City directed Contractor to perform prior to the specified termination date, for which services or work Authority and/or City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority and/or City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority and/or City or otherwise disposed of as directed by the Authority and/or City.

- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority and/or City, and any other appropriate credits to Authority and/or City against the cost of the services or other work.

(d) In no event shall Authority and/or City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority and/or City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

(e) In arriving at the amount due to Contractor under this Section, Authority and/or City may deduct: (1) all payments previously made by Authority and/or City for work or other services covered by Contractor's final invoice; (2) any claim which Authority and/or City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority and/or City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority and/or City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

(f) Authority and/or City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration

(a) This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9, 10, 11, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, 30, 43, 45 through 49, and 51.

(b) Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority and/or City, and deliver in the manner, at the times, and to the extent, if any, directed by Authority and/or City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority and/or City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's

Campaign and Governmental Conduct Code and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Contractor becomes aware of any such fact during the term of this Agreement, Contractor shall immediately notify the City.

24. Proprietary or Confidential Information of Authority and/or City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and/or City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority and/or City. Contractor agrees that all information disclosed by Authority and/or City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Except as otherwise expressly provided herein, all written communications sent by the parties may be by first class mail, e-mail or by facsimile, and shall be addressed as follows:

To Authority and/or City: Tony Hall, Executive Director
Treasure Island Development Authority
Treasure Island Building One
410 Palm Avenue
San Francisco, CA 94130
FAX: 415-274-0299

To Contractor: Rick Aubry, President
Rubicon Enterprises, Inc.
154 South 23rd Street
Richmond CA 94804
FAX: 510/412-1751

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority and/or City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority and/or City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority and/or City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority and/or City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority and/or City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority and/or City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority and/or City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority and/or City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority and/or City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code Section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority and/or City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

33. Disadvantaged Business Enterprise Utilization; Liquidated Damages

(a) **The DBE Ordinance.** Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(b) **Compliance and Enforcement.** If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE

Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code Section 14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Authority and/or City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with Authority and/or City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

(a) **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, Authority and/or City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Authority and/or City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with

spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code Section 12.F.5, the Authority and/or City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The Authority and/or City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

The Authority and/or City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Agreement.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Authority and/or City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation; Liquidated Damages

Chapter 21A of the San Francisco Administrative Code is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.

In the event Contractor fails to comply in good faith with any of the provisions of Chapter 21A, Contractor will be liable for liquidated damages in an amount equal to Contractor's net profit under this Agreement, or 5% of the total contract amount, whichever is greater. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to Authority and/or City upon demand and may be offset against any monies due to Contractor from any contract with Authority and/or City.

39. Notification of Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

40. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

41. Sunshine Ordinance

In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between Authority and/or City and persons or firms seeking contracts, shall be open to inspection

immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

42. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in Authority and/or City funds or Authority and/or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority and/or City to terminate and/or not renew the Agreement, partially or in its entirety.

43. Requiring Minimum Compensation for Covered Employees. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/oca/lwlh/mco/12p.htm. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the Authority and/or City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$10.51 an hour through December 31, 2004. On January 1, 2005, Contractor shall increase the hourly gross compensation to \$10.77 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity the rate shall remain at \$9.00.

(b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this

Agreement. The Authority and/or City, acting through the Contracting Department, shall determine whether such a breach has occurred.

(d) If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Authority and/or City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the Authority and/or City for three years.

Each of the rights provided in this subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the Authority and/or City. Any amounts realized by the Authority and/or City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the AUTHORITY AND/OR CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the MCO, including reports on subcontractors.

(h) The Contractor shall provide the Authority and/or City with access to pertinent

records after receiving a written request from the Authority and/or City to do so and being provided at least five (5) business days to respond.

(i) The Authority and/or City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority and/or City from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority and/or City may pursue any of the remedies set forth in this Section against Contractor.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the

agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at www.sfgov.org/oca/lwlh/hcao/12q.htm. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

(b) Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority and/or City shall notify Contractor if such a breach has occurred. If, within thirty (30) days after receiving Authority and/or City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Authority and/or City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority and/or City.

(d) Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify Authority and/or City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Authority and/or City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that Authority and/or City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

(e) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to

assert or enforce any rights under the HCAO by any lawful means.

(f) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Contractor shall keep itself informed of the current requirements of the HCAO.

(h) Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Contractor shall provide Authority and/or City with access to records pertaining to compliance with HCAO after receiving a written request from Authority and/or City to do so and being provided at least five (5) business days to respond.

(j) Authority and/or City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with Authority and/or City when it conducts such audits.

(k) If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with Authority and/or City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the Authority and/or City to be equal to or greater than \$75,000 in the fiscal year.

45. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

46. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Office of Contract Administration which shall decide the true meaning and intent of the Agreement.

47. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

48. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

49. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 45.

50. Compliance with Laws

Contractor shall keep itself fully informed of the Authority and/or City's Charter, codes, ordinances and regulations of the Authority and/or City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

51. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

AUTHORITY AND/OR CITY

Recommended by:

Tony Hall, Executive Director
Treasure Island Development Authority

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood Paragraph 35, the Authority and/or City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Rick Aubry, President
Rubicon Enterprises, Inc.
154 South 23rd Street
Richmond, CA 94804
FEIN: 68-0353815
Vendor No. 46249
510/412-1771

A: Services to be Provided by Contractor

B: Calculation of Charges

APPENDIX A

SERVICES TO BE PROVIDED BY CONTRACTOR

Contractor shall provide all labor, materials, and equipment necessary to perform groundskeeping and landscape maintenance services on each Base parcel identified in Exhibit 1, "Map of Treasure Island" and Exhibit 2, "Map of Yerba Buena Island" according to the following Landscape Maintenance Specifications. In fulfilling the terms of this Agreement, Contractor shall follow the Integrated Pest Management Program of the City and County of San Francisco. In performing its rights and responsibilities under this Agreement, Contractor shall comply with the workforce hiring goals for qualified economically disadvantaged San Francisco residents as provided in Addendum 1 to this Appendix A.

LANDSCAPE MAINTENANCE SPECIFICATIONS FORTREASURE AND YERBA BUENA ISLANDS

Level 1 Services

Turf Grass Mowing and Associated Cleanup: All turf areas shall be maintained in a once per week during the growing season and twice per month for the period November 15 through March 1, an average of two times per month. Turf grass height shall be maintained between 2 inches and 3.5 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers, and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair or replace any items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, and other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed on once per week. Tree wells shall be maintained around all trees and large shrubs growing in lawn and turf areas. A weed control program shall be implemented to achieve turf areas relatively free of broadleaf weeds and other targeted weeds. All clippings shall be cleared from walkways, roadways, and other paved areas. Rubicon shall recycle and reuse waste plant material to the greatest extent possible.

Annual & Perennial Color Plants: Annual color shall be planted in specified areas as directed by assigned staff of the Mayor's Treasure Island Project Office. Planting shall occur three times per year by October 15, April 1, and July 15. Plant beds shall be maintained at all times to insure good plant health and appearance. Plant beds shall be dressed with fine, uniform organic compost. It is estimated that no more than 1,000 flats of annuals (333 flats per planting session) and some perennials will be required.

Trees and Shrubs: All trees and shrubs shall be pruned to as required to promote proper health, provide safe passage, maintain a healthy and pleasing appearance, and prevent interference with pedestrian and vehicular traffic. Trees and shrubs shall be treated as necessary to prevent disease, fungus, and insect damage. Trees shall be pruned to keep their canopies from extending into pathways. All tree pruning shall be limited to heights under 12 feet. Pruning shall be performed to: prevent growth in front of windows, over entranceways and walkways, and in locations where visibility at street intersections would be obstructed; remove dead, diseased or

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damaged growth; evenly form or balance trees and shrubs to maintain their established shape; informal hedges or screen plantings shall not be converted to formal shapes; remove tree branches up to eight inches (8") in diameter and within ten feet (10') of the ground if such branches extend over pathways or roads; extensive pruning and "cut back" activities shall be accomplished in the winter to give trees sufficient time to recover before the growing season; ivy and ground cover shall be kept to a minimum of eight inches (8") from shrubs and trees; a 3-inch layer of mulch will be installed over bare soil in shrub areas to discourage weeds and improve soil. Any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost.

Fertilization, Weed Control, Fungicides and Insecticides: Fertilization shall be applied up to four (4) times per year to promote the proper health and appearance of turf, shrubs, trees, groundcover, and color areas. A complete fertilizer with an analysis of 16-6-6 or other commercial liquid fertilizers are not acceptable. Herbicides, fungicides, insecticides and lime shall be applied as necessary to maintain superior plant health and appearance.

Irrigation: Irrigation shall be performed in a manner that promotes proper plant health and growth. Irrigation shall include the watering of lawns, shrubs, trees, planting areas, round cover and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses that are used for watering and all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining any repairing any underground piping located more than one foot from any sprinkler head.

Weed Control In Paved Areas: Weeds shall be removed from all asphalt and other

Paved areas. Herbicides shall be applied to prevent re-growth.

Policing: All maintenance areas shall be policed at least once per week to remove paper and other trash type litter.

Debris Removal, and Storm Damage Cleanup: All maintenance areas shall be cleaned two (2) times per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

Playground, Sandboxes, Ball Fields, and Tennis Courts: Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

ADDENDUM 1 TO APPENDIX A

1. WORKFORCE HIRING GOALS

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the following workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents.

1.1 Contractor's Workforce Hiring Goals. Contractor shall use Good faith Efforts to meet the work force hiring goals described herein (the "Workforce Goals"). For purposes of this Section 1, Contractor's Good Faith Efforts shall include, but not be limited to, the following:

- (a) Submitting detailed written plans describing how Contractor intends to meet the Workforce Goals (a "Hiring Plan");
- (b) Listing jobs available on the Premises with the TIHDI Job Broker at least two weeks prior to advertising for applicants elsewhere;
- (c) Considering for appropriate job openings all candidates who are qualified, screened and referred to it by the TIHDI Job Broker;
- (d) Establishing with TIHDI mutually acceptable means of communicating about job openings and provide information about jobs and about outcomes of referrals within a reasonable time upon request by the TIHDI Job Broker;
- (e) Consulting with the TIHDI Job Broker on an ongoing basis about how to meet Contractor's Workforce Goals; and
- (f) Meeting and conferring with the TIHDI Job Broker to discuss and attempt to resolve any problems with Contractor meeting its Workforce Goals.

1.2 Burden of Proof. If the Workforce Goals are not met, Contractor shall have the burden of establishing in any Enforcement Procedure described in Section 1.9 below that it made Good Faith Efforts and that the candidates who were selected were better qualified for work than the homeless or economically disadvantages persons who applied or were referred by the TIHDI Job Broker.

1.3 Construction Workforce. Without obligation (other than as expressly set forth herein), Contractor shall also be required to give consideration for hiring on all construction projects on the Premises to qualified homeless or otherwise economically disadvantaged persons, and to qualified residents of San Francisco whose annual income, at the time of hire, is at or below fifty percent (50%) of median income for the City as determined by HUD.

1.4 Subcontracting. Contractor will consider subcontracting certain tasks to be performed by Contractor under this Agreement to TIHDI member organizations, particularly for grounds keeping, janitorial, recycling and deconstruction activities. Subcontracts with TIHDI organizations will be included for purposes of determining Contractor's Good Faith Efforts to meet the Work Force Goals.

1.5 Hiring Plan.

(a) Contractor shall submit its Hiring Plan to the Authority within sixty (60) days of the Commencement Date. Contractor's Hiring Plan shall include a detailed description of how Contractor intends to meet its Workforce Goals, which description should include community outreach and recruiting efforts, hiring procedures (e.g., phased hiring), a projected schedule for meeting the Workforce Goals, and alternative courses of action if it appears that the Workforce Goals will not be met.

(b) During the first thirty (30) days after the Hiring Plan is submitted, the Authority and Contractor shall negotiate in good faith solutions to any deficiencies in the Hiring Plan as reasonably determined by the Authority. At the expiration of such thirty- (30) day period, the Authority shall advise Contractor, through a written "Notice of Noncompliance," of any alleged deficiency in the Hiring Plan remaining at the close of such negotiations. The Notice of Noncompliance shall state the specific basis for the alleged deficiency(ies) and the Authority's suggested cure. Contractor shall advise the Authority within ten (10) days of its receipt of the Notice of Noncompliance whether Contractor accepts the suggested cure. If the Contractor rejects the suggested cure, either party may proceed immediately to the Enforcement Procedure pursuant to Section 1.9 below by filing a Request for Enforcement ("Request") on the Hiring Plan. The Request shall specify the issues presented and the relief requested.

1.6 Reports. Contractor shall prepare reports regarding the composition of Contractor's work force reasonably satisfactory to the Authority.

1.7 Matters Subject to Enforcement Procedure. In addition to the initial preparation of the Hiring Plan, all matters related to implementing the Hiring Plan and the Workforce Goals are subject to the Enforcement Procedure described in Section 1.9 below.

1.8 Implementation of Enforcement Procedure. The Enforcement Procedure, as provided for in Section 1.9 below, shall be the exclusive procedure for resolving any dispute concerning the interpretation or implementation of the Hiring Plan or any alleged deficiency in Contractor's Good Faith Efforts to achieve the Workforce Goals. The Enforcement Procedure shall be implemented by the Human Rights Commission of the City of County of San Francisco (the "Commission"), which shall have the powers described below unless otherwise provided by law.

All subcontracts related to the Agreement ("Subcontracts") shall incorporate the provisions of this Section 1 and the Authority shall have the right to enforce said obligations, requirements and agreements against the Contractor or its subcontractors. Contractor shall require, by contract, that each subcontractor participates in Enforcement Procedure proceedings in which it may be identified in a Request, and that each subcontractor shall be bound by the outcome of such Enforcement Procedure according to the decision of the Commission.

1.9 Enforcement Procedure.

(a) If the Authority reasonably determines that Contractor has failed to use Good Faith Efforts to meet the Workforce Goals, or for any other matter subject to this Enforcement Procedure the Authority shall send a written Notice of Noncompliance to Contractor describing the basis for its determination and suggesting a means to cure any deficiencies. If Contractor

does not, in the reasonable discretion of the Authority, cure the deficiency within ten (10) days, the matter shall be submitted to the following Enforcement Procedure.

(i) Prior to the filing and service of a Request, the parties to any dispute shall meet and confer in an attempt to resolve the dispute.

(ii) The Authority, Contractor or any subcontractor may commence resolution of any dispute covered by the Enforcement Procedure by filing a Request with the Commission. Where the Authority is not the complaining party, the Request shall be served on the Authority. Where the Authority is the complaining party, the Request shall be served on the Contractor at the Notice Address listed in the Agreement, and the non-compliant subcontractor, if any, if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

(iii) Service on the Contractor of the Request or any notice provided for by this Section 1 shall constitute service of the Request or notice on all subcontractors who are identified as being in alleged noncompliance in the Request. The Contractor shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such subcontractors.

(iv) The TIHDI Job Broker shall have the right to present testimony or documentary evidence at Enforcement Procedure proceedings.

(v) After the filing and the service of a Request, the parties shall negotiate in good faith for a period of ten (10) business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Enforcement Procedure, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction ("Temporary Relief"). The Commission shall determine whether the facts reasonably supported the issuance of Temporary Relief.

(vi) If the dispute is not settled within ten (10) business days, a hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties or ordered by the Commission upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on fifteen (15) days' notice. The Commission shall set the date, time and place for the Enforcement Procedure hearing(s) within the proscribed time periods by giving notice by hand delivery to the Authority and the Contractor; except, where a temporary restraining order is sought, the Commission may give notice of the hearing date, time and place to the Authority, Contractor and any affected subcontractor by telephone.

(vii) In the Enforcement Procedure proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure Section 1283.05.

(b) Commission's Decision. The Commission shall render a decision within twenty (20) days of the date that the hearing on a Request is completed; provided that where a temporary restraining order is sought, the Commission shall render a decision not later than twenty-four (24) hours after the hearing on the motion. The Commission shall send the decision by certified or registered mail to the Authority, the Contractor and the subcontractor, if any.

(i) The Commission may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Contractor, the Contractor shall provide proof of service on the party as required by this Section. If the Contractor fails to provide proof of service, the Contractor shall pay \$2,500 as liquidated damages to the Authority, provided that no such damages shall be assessed if the Contractor demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure Section 1281.2.

(ii) Except as otherwise provided in this Section 1, the Commission shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, or to negotiate new agreements or provisions between the parties.

(iii) The inquiry of the Commission shall be restricted to the particular controversy that gave rise to the request for the Enforcement Procedure. A decision of the Commission issued hereunder shall be final and binding upon the Authority, Contractor, and subcontractors, if any, sent by mail to the Authority, the Contractor and the subcontractor, if any. The losing party shall pay the Commission's fees and related costs of the Enforcement Procedure. If a subcontractor is the losing party and fails to pay said fees within thirty (30) days of the decision, the Contractor shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the Commission finds that the Request was frivolous or that the Enforcement Procedure action was otherwise instituted or litigated in bad faith. Judgment upon the Commission's decision may be entered in any court of competent jurisdiction.

(c) Remedies and Sanctions. Except as may otherwise be expressly provided herein, the Commission may impose only the remedies and sanctions set forth below and only against the non-compliant party(ies):

(i) Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the Contractor's failure to make Good Faith Efforts, and/or to require Contractor and/or its subcontractors to make such Good Faith Efforts, including, but not limited to, orders enjoining the Contractor from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for employment at the Premises pending resolution of the alleged deficiency(ies) in the Hiring Plan or Contractor's implementation of the Workforce Goals.

(ii) Require the Contractor or Subcontractors to refrain from entering into new contracts related to work related to the Agreement, or from granting extensions or other modifications to existing contracts related to the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any non-compliant subcontractor until such subcontractor provides assurances

satisfactory to the Authority and the Contractor of future Good Faith Efforts to comply with the Workforce Goals.

(iii) Direct the Contractor or subcontractor to cancel, terminate, suspend or cause to be canceled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the subcontractor to make Good Faith Efforts to comply with the Workforce Goals, provided, however that Subcontracts may be continued upon the condition that a program for future compliance is approved by the Authority.

(iv) If the Contractor or subcontractor is found to be in willful breach of its obligations to make Good Faith Efforts to achieve the Workforce Goals, impose financial penalties not to exceed \$50,000 or 10 percent of the total monetary consideration contemplated by the Agreement, whichever is less, for each such breach on the party responsible for the willful breach; provided, however, no penalty shall be imposed pursuant to this paragraph for the first willful breach unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. The Contractor or subcontractor may impose penalties for subsequent willful breaches whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

(v) Direct that the Contractor or subcontractor produce and provide to the Authority any records, data or reports that are necessary to determine if a violation has occurred and/or to monitor the performance of the Contractor or Subcontractor.

(vi) Issue such other relief deemed necessary to ensure that the Hiring Plan is written and implemented, and that Contractor makes Good Faith Efforts to meet its Workforce Goals, including requiring the inclusion or exclusion of specific terms or provisions in the Hiring Plan based on a determination that the term(s) added or removed further the requirements and objectives of this Section 1.

(d) Delays due to enforcement. If Contractor does not timely perform its obligations under the Agreement with the Authority because of a Commission's order against a party other than the Contractor, such order shall be deemed an event of Force Majeure, and the time for any performance by the Contractor shall be extended as provided therein; provided, however, that Contractor shall make good faith efforts to minimize any delays.

(e) Exculpatory clause. The Contractor and its subcontractors hereby forever waive and release any and all claims against the Authority for Losses arising under or related to this Section 1.

(f) California law applies. California law, including the California Arbitration Act, Code of Civil Procedure Sections 1280 through 1294.2, shall govern all the Enforcement Procedure proceedings.

(g) Designation of agent for service. Not later than five (5) days after the execution of this Agreement, the Contractor shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request and all notices provided for herein. If the Contractor has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on

1.10 Relationship to Other Employment Agreements. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce-training agreements or interfere with consent decrees, collective bargaining agreements or existing employment contracts. In the case of collective bargaining agreements, Contractor will take primary responsibility for integrating the requirements of Contractor's Workforce Goals with any such collective bargaining agreements. As necessary, Contractor will attempt to negotiate equivalent first source hiring obligations with relevant unions.

APPENDIX B BUDGET

For an amount not to exceed \$80,000.00 per month, or \$800,000 for 10 months, Contractor will provide the following:

PARCEL	DESCRIPTION	SERVICE LEVEL	10 months FY04
parcel 1	bldg 1, tourist stop, causeway	1	29,205
parcel 1A	bldg 180	1	7,123
parcel 2	bldg 2	1	18,088
parcel 3	bldg 3	1	7,450
parcel 4	pier 1	3	1,277
parcel 5	Calif. between M&I	2	4,096
parcel 6	picnic area tennis courts	3	7,387
parcel 6A	baseball field	3	2,609
parcel 6B	bldg 233 lift station surrounds	3	3,457
parcel 7	bldg 92 & surrounds	3	16,977
parcel 8	bldg 99, 29, & surrounds	3	12,558
parcel 9	demolition site		
parcel 10	legal bldg & surrounds	2	17,625
parcel 11	Job Corps		
parcel 12	post office	3	4,839
parcel 13	dog park site/playing fields	1	46,174
parcel 14	star barracks	2	26,035
parcel 15	great lawn casa chapel library	1	110,480
parcel 16	Nimitz conference center	2	17,144
parcel 17	TIHDI childcare center		
parcel 18	navy exchange	3	1,610
parcel 18A	CEC laydown		
parcel 18B	bldg 257	3	4,371
parcel 19	old brig	3	7,821
parcel 19A	field		
parcel 20	elementary school		
parcel 21	See adjunct item		
parcel 21A	See adjunct item		
parcel 22	fire school	3	1,807
parcel 23	PUC	3	4,129
parcel 24	brig	1	7,740
parcel 25	gas station	3	1,911
parcel 26	sewage treatment		
parcel 27	area near Austin Hall	1	1,811
parcel 27A	Austin Hall & surrounds	3	
parcel 28A	housing ir sites		
parcel 28B	housing ir sites		
parcel 29	auto hobby shop	3	2,473
YERBA BUENA ISLAND			
Captains Park		1	7,077
quarters 1	Nimitz House	2	5,699
quarters 2-7	great whites	2	14,667
quarters 61		1	2,867

quarters 62		6,471
quarters 240		6,945
SUBTOTAL		409,923
Adjunct Work		
Items		
item 1	fire breaks	38,087
item 2	outer seawall	10,473
item 3	inner seawall	6,325
item 4	garbage & tourist stop	12,789
item 5	T1 garbage cans	10,643
item 6	poison oak	1,266
item 7	annual planting & maintenance	19,463
item 8	diseases & insects	1,586
item 9	storm damage clean-up	25,365
item 10	inventory housing (parcel 28)	11,109
item 11	reservoir maintenance	15,821
item 12	pump station maintenance	4,153
item 13	parcel 21	10,705
item 14	parcel 21A gym & surrounds	16,253
item 15	parcel 27A	4,669
Subtotal		188,707
TOTAL		598,630
Additional Services		201,370
CONTRACT MAXIMUM		800,000

Written authorization is required to expend funds allocated for additional landscape services and playground rehabilitation services.

**TREASURE ISLAND DEVELOPMENT AUTHORITY
CITY AND COUNTY OF SAN FRANCISCO**

FIRST AMENDMENT

THIS FIRST AMENDMENT (this "Amendment") is made as of July 1, 2005, in San Francisco, California, by and between Rubicon Enterprises, Inc. ("Contractor"), a California nonprofit corporation and a member of the Treasure Island Homeless Development Initiative ("TIHDI") and the Treasure Island Development Authority, a California nonprofit public benefit corporation ("Authority"), acting by and through its Executive Director ("Executive Director").

RECITALS

WHEREAS, Authority and Contractor have entered into an Agreement dated the first day of September 2004 (the "Agreement"); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

1. **Modifications to the Agreement.** The Agreement is hereby modified as follows:
 - a. **Section 2.** Section 2, Term of the Agreement, currently reads as follows:

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from September 1, 2004 to June 30, 2005.

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from July 1, 2005 to June 30, 2006.

b. Exhibit B. Exhibit B of the Agreement is hereby replaced in its entirety by Exhibit B-1 of this Amendment, and all references to Exhibit in the Agreement shall be construed to mean Exhibit B-1.

2. **Effective Date.** Each of the modifications set forth in this Amendment shall be effective on and after the date of this Amendment.
3. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

Authority

Contractor

Tony Hall, Executive Director
Treasure Island Development Authority

Rick Aubry, President
Rubicon Enterprises, Inc.
154 South 23rd Street
Richmond, CA. 94804
(510) 412-1771
FEIN: 68-0353815
Vendor No. 46249

Approved as to form

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

EXHIBIT B-1 BUDGET

For an amount not to exceed \$66,667.00 per month, or \$800,000 for 12 months,

Contractor will provide the following:

PARCEL	DESCRIPTION	SERVICE LEVEL	12 months FY05
parcel 1	bldg 1, tourist stop, causeway	1	\$29,205
parcel 1A	bldg 180	1	7,123
parcel 2	bldg 2	1	18,088
parcel 3	bldg 3	1	7,450
parcel 4	pier 1	3	1,277
parcel 5	Calif. between M&I	2	4,096
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parcel 23	PUC	3	4,129
parcel 24	brig	1	7,740
parcel 25	gas station	3	1,911
parcel 26	sewage treatment		
parcel 27	area near Austin Hall	1	1,811
parcel 27A	Austin Hall & surrounds	3	
parcel 28A	housing ir sites		
parcel 28B	housing ir sites		
parcel 29	auto hobby shop	3	2,473
YERBA BUENA ISLAND			
Captains Park		1	7,077
quarters 1	Nimitz House	2	5,699
quarters 2-7	great whites	2	14,667

quarters 61	1	2,867
quarters 62		6,471
quarters 240		6,945
SUBTOTAL		\$409,923
Adjunct Work Items		
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item 2	outer seawall	10,473
item 3	inner seawall	6,325
item 4	garbage & tourist stop	12,789
item 5	TI garbage cans	10,643
item 6	poison oak	1,266
item 7	annual planting & maintenance	19,463
item 8	diseases & insects	1,586
item 9	storm damage clean-up	25,365
item 10	inventory housing (parcel 28)	11,109
item 11	reservoir maintenance	15,821
item 12	pump station maintenance	4,153
item 13	parcel 21	10,705
item 14	parcel 21A gym & surrounds	16,253
item 15	parcel 27A	4,669
Subtotal		\$188,707
TOTAL		\$598,630
Additional Services		\$201,370
CONTRACT MAXIMUM		\$800,000

Written authorization is required to expend funds allocated for additional landscape services and playground rehabilitation services

in additional janitorial services, including (subject to negotiation) assistance with special event support during the same term.

RECOMMENDATION

Staff recommends approval of the contract for janitorial services with Toolworks from July 1, 2005 through June 30, 2006 for an amount not to exceed \$130,000.

EXHIBITS

- A First Amendment to Contract with Toolworks, Inc.
- B. Original Contract with Toolworks, Inc.

1 [Toolworks Contract]

2 AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE FIRSTAMENDMENT TO
3 THE AGREEMENT WITH TOOLWORKS, INC. TO PROVIDE JANITORIAL AND BUILDING
4 MAINTENANCE SERVICES AND EXTEND THE TERM OF THE AGREEMENT THROUGH
5 JUNE 30, 2006 FOR AN AMOUNT NOT TO EXCEED \$130,000.
6
7

8 **WHEREAS**, Naval Station Treasure Island is a military base located on Treasure
9 Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United
10 States of America ("the Federal Government"); and,

11 **WHEREAS**, The Base was selected for closure and disposition by the Base
12 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
13 subsequent amendments; and,

14 **WHEREAS**, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
15 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
16 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
17 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
18 conversion of the Base for the public interest, convenience, welfare and common benefit of
19 the inhabitants of the City and County of San Francisco; and,

20 **WHEREAS**, Under the Treasure Island Conversion Act of 1997 (the "Act"), which
21 amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to
22 Chapter 1333 of the Statutes of 1968, the California Legislature (i) designated the Authority as
23 a redevelopment agency under California redevelopment law with authority over the Base
24 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the
25

1 Base which are subject to the Tidelands Trust, vested in the Authority the authority to
2 administer the public trust for commerce, navigation and fisheries as to such property; and

3 **WHEREAS**, On February 6, 1998, the Board of Supervisors adopted Resolution No.
4 43-98 approving the designation of the Authority as a redevelopment agency for Treasure
5 Island and Yerba Buena Island; and,

6 **WHEREAS**, The Authority has negotiated and endorsed a proposed Base Closure
7 Homeless Assistance Agreement and Option to Lease Real Property (the "Homeless
8 Assistance Agreement") with the Treasure Island Homeless Development Initiative, a
9 consortium of California nonprofit corporations ("TIHDI") organized to utilize the resources of
10 the Base to help fill gaps in the continuum of care for homeless persons and families,
11 pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of
12 1994 [check accuracy of title]; and,

13 **WHEREAS**, The Authority wishes to support TIHDI pursuant to the Base Closure
14 Community Redevelopment and Homeless Assistance Act of 1994; and,

15 **WHEREAS**, Toolworks, Inc. is a California nonprofit corporation and a member
16 organization of TIHDI, and Toolworks, Inc. has represented and warranted that it is qualified
17 to perform the janitorial and other building maintenance services required by the Authority as
18 set forth under the proposed contract; and,

19 **WHEREAS**, The Authority's purchasing policy and procedures authorize non-
20 competitive negotiations for contracts in furtherance of the Homeless Assistance Agreement;
21 and,

22 **WHEREAS**, On September 1, 2004, the Authority and Toolworks, Inc. entered into an
23 agreement for janitorial and other building maintenance services on the former Base (the
24 "Agreement"); and,

WHEREAS, The Authority has negotiated with Toolworks, Inc. to reach agreement on a proposed First Amendment to the Agreement which (i) modifies the scope of work and budget for the services shown in Appendix B-1 of the First Amendment attached to this resolution as Exhibit A, and (ii) extends the term of the Agreement for an additional 12 months; now, therefore be it

RESOLVED, That the Authority hereby authorizes the Executive Director to execute the First Amendment to the Agreement, to extend the term of the Agreement to June 30, 2006 for an amount not to exceed one hundred and thirty dollars (\$130,000) to provide janitorial and other building maintenance services for the Authority at former Naval Station Treasure Island, and that the form of the First Amendment to the Agreement shall be substantially as shown on Exhibit A attached to this resolution.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 8, 2005.

Susan Po-Rufino, Secretary

Exhibit B-1 - BUDGET

For an amount not to exceed \$8,500 per month, or \$102,000 for the period from July 1, 2005 through June 30, 2006, Contractor will provide:

- 74 hours of janitorial services weekly, including weekends and holidays
- cleaning equipment, materials and supplies
- soap, toilet paper, hand towels, seat covers for all restrooms and kitchens in all venues
- Uniform soap and paper goods dispensers for all restrooms and kitchens in all venues
- transport of equipment and personnel among venues

For an amount not to exceed \$28,000 per year at the specific request of Special Events Coordinator, or Deputy Executive Director:

- Carpet cleaning @ \$40.00 per 500 square feet (500 sf minimum service area)
- Additional window cleaning @ \$30.00 per hour
- Additional janitorial services @ \$30.00 per hour

Special event services including opening and closing event venues and monitoring event activities @ \$30.00 per hour

CITY AND COUNTY OF SAN FRANCISCO
TREASURE ISLAND DEVELOPMENT AUTHORITY
TREASURE ISLAND BUILDING ONE
410 AVENUE OF THE PALMS
SAN FRANCISCO, CALIFORNIA 9130

FIRST AMENDMENT

THIS FIRST AMENDMENT (this "Amendment") is made as of July 1, 2005, in San Francisco, California, by and between Toolworks, Inc., a California nonprofit corporation and a member organization of the Treasure Island Homeless Development Initiative ("Contractor"), and the Treasure Island Development Authority, a California nonprofit public benefit corporation ("Authority").

RECITALS

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated September 1, 2004 between Contractor and Authority.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

(a) **Section 2.** Section 2, Term of the Agreement, currently reads as follows:

2. **Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from September 1, 2004 to June 30, 2005.

Such section is hereby amended in its entirety to read as follows:

2. **Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from July 1, 2005 to June 30, 2006.

(b) **Section 5.** Paragraph 1 of Section 5., Compensation currently reads as follows:

5. **Compensation**

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed one hundred and ten thousand dollars (\$110,000). The breakdown of such costs associated with this Agreement appears in Appendix B, Calculation of Charges, attached hereto and incorporated by reference as though fully set forth herein.

Such section is hereby amended in its entirety to read as follows:

5. Compensation

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed eight hundred fifty thousand dollars (\$130,000). The breakdown of such costs associated with this Agreement appears in Appendix B-1, Calculation of Charges, attached hereto and incorporated by reference as though fully set forth herein.

(c) **Appendix B.** Appendix B of the Agreement is hereby replaced in its entirety by Appendix B-1 attached to this Amendment.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

AUTHORITY:
TREASURE ISLAND DEVELOPMENT
AUTHORITY

Tony Hall, Executive Director
Treasure Island Development Authority

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

CONTRACTOR:
TOOLWORKS, INC, a California
nonprofit public benefit corporation

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

Steven Crabel, Executive Director
Toolworks, Inc.
25 Kearny St., Suite 400
San Francisco, CA 94108
FEIN: 94-2493384
Vendor No. 46565
415.733.0990 - Phone
415.733.0991 - Fax

City and County of San Francisco
TREASURE ISLAND DEVELOPMENT AUTHORITY
Treasure Island Building 1, 410 Palm Avenue
San Francisco, California 94130

Agreement between the Treasure Island Development Authority and

TOOLWORKS, INC.

This Agreement is made this first day of September 2004, in the City and County of San Francisco, State of California, by and between Toolworks, Inc., a California nonprofit corporation and a member organization of the Treasure Island Homeless Development Initiative, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a municipal corporation, hereinafter referred to as "Authority," acting by and through its Executive Director, hereinafter referred to as "Executive Director."

Recitals

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, It is necessary to provide janitorial services to fulfill the requirements of the Authority's contract with the United States Navy for caretaker services on former naval base Treasure Island, and to promote public health and safety on Treasure Island and

WHEREAS, the Authority wishes to support the Homeless Assistance Component of the Treasure Island Reuse Plan; and

WHEREAS, the Contractor is a member of the Treasure Island Homeless Development Initiative; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the janitorial services required by the Authority as set forth in this Agreement; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for janitorial services shown in Appendix A; and

WHEREAS, approval for said Agreement was obtained from the Board of Supervisors by Resolution No. 672-96, dated July 1, 1997;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("City"). Charges will accrue only after prior written authorization certified by the City's Controller ("Controller"), and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority and/or City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

The Authority and/or City have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority and/or City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from September 1, 2004 to June 30, 2005.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed one hundred ten thousand dollars (\$110,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Authority as being in accordance with this Agreement. Authority and/or City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority and/or City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

(a) The Authority and/or City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of the Authority and/or City are not authorized to request, and the Authority and/or City is not required to reimburse the Contractor for Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of the Authority and/or City are not authorized to offer or promise, nor is the Authority and/or City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Authority. All amounts paid by Authority and/or City to Contractor shall be subject to audit by Authority and/or City.

Payment shall be made by Authority and/or City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Authority and/or City for three times the amount of damages which the Authority and/or City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority and/or City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority and/or City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority and/or City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority and/or City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority and/or City; (c) conspires to defraud the Authority and/or City by getting a false claim allowed or paid by the Authority and/or City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority and/or City; or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority and/or City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority and/or City within a reasonable time after discovery of the false claim.

9. Disallowance

If Contractor claims or receives payment from Authority and/or City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to Authority and/or City upon Authority and/or City's request. At its option, Authority and/or City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes

(a) Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

(b) Contractor recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority and/or City property for private gain. If such a possessory interest is created, then the following shall apply:

(i) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

(ii) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority and/or City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

(iii) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(iv) Contractor further agrees to provide such other information as may be requested by the Authority and/or City to enable the Authority and/or City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority and/or City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and/or City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority and/or City’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority and/or City’s request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

Authority and/or City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority and/or City.

14. Independent Contractor; Payment of Taxes and Other Expenses

(a) **Independent Contractor:** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority and/or City under this Agreement. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and/or City and Contractor, or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority and/or City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority and/or City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

(b) **Payment of Taxes and Other Expenses:** Should Authority and/or City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority and/or City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority and/or City, upon notification of such fact by Authority and/or City, Contractor shall promptly remit such amount due or arrange with Authority and/or City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority and/or City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority and/or City's financial liability so that Authority and/or City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

(a) Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(b) Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the Authority and the City and County of San Francisco, their Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(c) All policies shall provide thirty (30) days' advance written notice to Authority and/or City of cancellation mailed to the following address:

Treasure Island Development Authority
Treasure Island Building One
410 Palm Avenue
San Francisco, CA 94130

(d) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(f) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority and/or City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority and/or City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(g) Before commencing any operations under this Agreement, Contractor must furnish to Authority and/or City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to Authority and/or City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Authority and/or City request.

(h) Approval of the insurance by Authority and/or City shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless Authority and/or City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Authority and/or City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority and/or City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and/or City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify Authority and/or City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and/or City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and/or City and continues at all times thereafter.

Contractor shall indemnify and hold Authority and/or City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority and/or City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Authority and/or City may have under applicable law.

18. Liability of Authority and/or City

AUTHORITY AND/OR CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY AND/OR CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left blank by agreement of the parties

20. Default; Remedies

(a) Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, or 50.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from Authority and/or City to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy

or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

(b) On and after any Event of Default, Authority and/or City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority and/or City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority and/or City on demand all costs and expenses incurred by Authority and/or City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority and/or City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and/or City and Contractor all damages, losses, costs or expenses incurred by Authority and/or City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

(c) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

(a) Authority and/or City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority and/or City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

(b) Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and/or City and to minimize the liability of Contractor and Authority and/or City to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority and/or City. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority and/or City.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At Authority and/or City's direction, assigning to Authority and/or City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority and/or City

shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

- (5) Subject to Authority and/or City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work which Authority and/or City designates to be completed prior to the date of termination specified by Authority and/or City.
- (7) Taking such action as may be necessary, or as the Authority and/or City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority and/or City has or may acquire an interest.

(c) Within thirty (30) days after the specified termination date, Contractor shall submit to Authority and/or City an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work Authority and/or City directed Contractor to perform prior to the specified termination date, for which services or work Authority and/or City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority and/or City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority and/or City or otherwise disposed of as directed by the Authority and/or City.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority and/or City, and any other appropriate credits to Authority and/or City against the cost of the services or other work.

(d) In no event shall Authority and/or City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority and/or City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on

this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

(e) In arriving at the amount due to Contractor under this Section, Authority and/or City may deduct: (1) all payments previously made by Authority and/or City for work or other services covered by Contractor's final invoice; (2) any claim which Authority and/or City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority and/or City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority and/or City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

(f) Authority and/or City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration

(a) This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9, 10, 11, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, 30, 43, 45 through 48, and 50.

(b) Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority and/or City, and deliver in the manner, at the times, and to the extent, if any, directed by Authority and/or City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority and/or City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Contractor becomes aware of any such fact during the term of this Agreement, Contractor shall immediately notify the City.

24. Proprietary or Confidential Information of Authority and/or City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or

confidential information which may be owned or controlled by Authority and/or City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority and/or City. Contractor agrees that all information disclosed by Authority and/or City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Except as otherwise expressly provided herein, all written communications sent by the parties may be by first class mail, e-mail or by facsimile, and shall be addressed as follows:

To Authority and/or City: Tony Hall, Executive Director
Treasure Island Development Authority
Treasure Island Building One
410 Palm Avenue
San Francisco, CA 94130
FAX: 415-274-0299

To Contractor: Steven Crabiel, Executive Director
Toolworks, Inc.
25 Kearny Street
San Francisco CA 94103
FAX: 415/621-8943

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority and/or City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority and/or City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority and/or City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval

of the Authority and/or City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority and/or City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority and/or City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority and/or City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority and/or City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority and/or City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code Section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is

hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority and/or City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Disadvantaged Business Enterprise Utilization; Liquidated Damages

(a) **The DBE Ordinance Compliance.** Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(b) **Compliance and Enforcement.** If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code Section 14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Authority and/or City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with Authority and/or City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, Authority and/or City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Authority and/or City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code Section 12.F.5, the Authority and/or City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The Authority and/or City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

The Authority and/or City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Agreement.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Authority and/or City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation; Liquidated Damages

Chapter 21A of the San Francisco Administrative Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.

In the event Contractor fails to comply in good faith with any of the provisions of Chapter 21A, Contractor will be liable for liquidated damages in an amount equal to Contractor’s net profit under this Agreement, or 5% of the total contract amount, whichever is greater. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to Authority and/or City upon demand and may be offset against any monies due to Contractor from any contract with Authority and/or City.

39. Notification of Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

40. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

41. Sunshine Ordinance

In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between Authority and/or City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure

of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

42. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in Authority and/or City funds or Authority and/or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority and/or City to terminate and/or not renew the Agreement, partially or in its entirety.

43. Requiring Minimum Compensation for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/oca/lwlh/mco/12p.htm. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the Authority and/or City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$10.51 an hour through December 31, 2004. On January 1, 2005, Contractor shall increase the hourly gross compensation to \$10.77 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity the rate shall remain at \$9.00.

(b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The Authority and/or City, acting through the Contracting Department, shall

determine whether such a breach has occurred.

(d) If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Authority and/or City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the Authority and/or City for three years.

Each of the rights provided in this subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the Authority and/or City. Any amounts realized by the Authority and/or City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the AUTHORITY AND/OR CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the MCO, including reports on subcontractors.

(h) The Contractor shall provide the Authority and/or City with access to pertinent records after receiving a written request from the Authority and/or City to do so and being provided at least five (5) business days to respond.

(i) The Authority and/or City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority and/or City from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority and/or City may pursue any of the remedies set forth in this Section against Contractor.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at www.sfgov.org/oca/lwh/hcao/12q.htm. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

(b) Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority and/or City shall notify Contractor if such a breach has occurred. If, within thirty (30) days after receiving Authority and/or City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Authority and/or City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority and/or City.

(d) Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify Authority and/or City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Authority and/or City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that Authority and/or City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

(e) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Contractor shall keep itself informed of the current requirements of the HCAO.

(h) Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Contractor shall provide Authority and/or City with access to records pertaining to compliance with HCAO after receiving a written request from Authority and/or City to do so and being provided at least five (5) business days to respond.

(j) Authority and/or City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with Authority and/or City when it conducts such audits.

(k) If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with Authority and/or City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the Authority and/or City to be equal to or greater than \$75,000 in the fiscal year.

45. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

46. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Office of Contract Administration which shall decide the true meaning and intent of the Agreement.

47. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

48. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

49. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 45.

50. Compliance with Laws

Contractor shall keep itself fully informed of the Authority and/or City's Charter, codes, ordinances and regulations of the Authority and/or City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

51. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

AUTHORITY AND/OR CITY

Recommended by:

Tony Hall, Executive Director
Treasure Island Development Authority

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By _____
Deputy City Attorney

Approved:

Naomi Little
Director, Office of Contract Administration

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood Paragraph 35, the Authority and/or City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Steven Crabiel, Executive Director
Toolworks, Inc.
1119 Market Street Suite 300
San Francisco, CA 94103
FEIN: 94-2493384
Vendor No. 46565
415/621-8665

APPENDICES

A: Services to be provided by Contractor

B: Calculation of Charges

**City and County of San Francisco
TREASURE ISLAND DEVELOPMENT AUTHORITY
Treasure Island Building 1, 410 Palm Avenue
San Francisco, California 94130**

Scope & Budget of the Agreement between the Treasure Island Development Authority and
TOOLWORKS, INC.

APPENDIX A

SERVICES TO BE PROVIDED BY CONTRACTOR

Toolworks ("Contractor") shall provide all labor, materials, and equipment necessary to perform janitorial services to buildings on Treasure Island and Yerba Buena Islands as described below. In performing the services provided for in this Appendix, Contractor's liaison with the Treasure Island Development Authority shall be Lori Mazzola, Special Events Coordinator.

For the following Treasure and Yerba Buena Island facilities, Building One, 410 Palm Avenue, Casa de la Vista, Chapel, Fogwatch, Nimitz Conference Center, and the Nimitz House, Contractor shall:

- Furnish all labor and materials for scheduled janitorial services
- Provide all necessary dispensers for soap, towels, toilet paper, seat covers and assure dispenser uniformity among all venues
- Stock all venues with cleaning supplies and appliances, including vacuum cleaners, mops, brooms, brushes
- Provide transportation of all staff among venues

Services to be performed:

- Empty all trash and place in outside debris boxes
- Empty all trash and place in outside debris boxes
- Vacuum all rugs
- Sweep all floors
- Mop all floors
- Dry-mop hardwood floors
- Spot clean all rugs and floors
- Dust and clean all furniture, ledges, corners, windowsills, countertops, and all dirt & dust gathering surfaces
- Dust around door and window ledges
- Dust cobwebs
- Clean all accessible windows inside and out
- Clean all mirrors and glass doors
- Clean all bathrooms, including toilets, urinals, sinks, countertops, windows, ledges, floors, stalls
- Clean all kitchens, including floors, appliances, mirrors, windows, and ledges
- Clean all appliances, inside and out, including ovens, refrigerators, freezers, grills and sinks
- Clean all bar areas including floors, appliances, under any mats, sinks

- Clean all fireplace covers and ledges
- Clean all rooms, including storage rooms, of all facilities
- Wipe off and clean all tabletops, table legs and chairs
- In Chapel, clean pews, dusts & polish podiums and pulpit and shelving area behind altar
- For all facilities clean in and around all doorways (inside and outside), sweep and remove trash for all entries and walkways
- In Casa, clean and sweep patio, empty trash cans and ashtrays, check landscaping for trash and remove
- Refill and replace bathroom and kitchen supplies including hand soap, hand towels, toilet paper, seat covers – all containers must be full at all times
- Keep bathroom and kitchen supply cabinets fully stocked

For Building One:

- Monthly: buff resilient floors
- Monthly polish brass railings and other brass fixtures
- Yearly: refinish all hard floors

For any questions, to report damages, or problems, contact the Mayor's Treasure Island Project Office:

Lori Mazzola, Special Events Coordinator, tel: 274-0312
Deputy Executive Director or Facilities Manager, tel:274-0660

ADDENDUM 1 TO APPENDIX A

1. WORKFORCE HIRING GOALS

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the following workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents.

1.1 Contractor's Workforce Hiring Goals. Contractor shall use Good faith Efforts to meet the work force hiring goals described herein (the "Workforce Goals"). For purposes of this Section 1, Contractor's Good Faith Efforts shall include, but not be limited to, the following:

- (a) Submitting detailed written plans describing how Contractor intends to meet the Workforce Goals (a "Hiring Plan").
- (b) Listing jobs available on the Premises with the TIHDI Job Broker at least two weeks prior to advertising for applicants elsewhere;
- (c) Considering for appropriate job openings all candidates who are qualified, screened and referred to it by the TIHDI Job Broker;
- (d) Establishing with TIHDI mutually acceptable means of communicating about job openings and provide information about jobs and about outcomes of referrals within a reasonable time upon request by the TIHDI Job Broker;
- (e) Consulting with the TIHDI Job Broker on an ongoing basis about how to meet Contractor's Workforce Goals; and
- (f) Meeting and conferring with the TIHDI Job Broker to discuss and attempt to resolve any problems with Contractor meeting its Workforce Goals.

1.2 Burden of Proof. If the Workforce Goals are not met, Contractor shall have the burden of establishing in any Enforcement Procedure described in Section 1.9 below that it made Good Faith Efforts and that the candidates who were selected were better qualified for work than the homeless or economically disadvantaged persons who applied or were referred by the TIHDI Job Broker.

1.3 Construction Workforce. Without obligation (other than as expressly set forth herein), Contractor shall also be required to give consideration for hiring on all construction projects on the Premises to qualified homeless or otherwise economically disadvantaged persons, and to qualified residents of San Francisco whose annual income, at the time of hire, is at or below fifty percent (50%) of median income for the City as determined by HUD.

1.4 Subcontracting. Contractor will consider subcontracting certain tasks to be performed by Contractor under this Agreement to TIHDI member organizations, particularly for grounds keeping, janitorial, recycling and deconstruction activities. Subcontracts with TIHDI organizations will be included for purposes of determining Contractor's Good Faith Efforts to meet the Work Force Goals.

1.5 Hiring Plan.

(a) Contractor shall submit its Hiring Plan to the Authority within sixty (60) days of the Commencement Date. Contractor's Hiring Plan shall include a detailed description of how Contractor intends to meet its Workforce Goals, which description should include community outreach and recruiting efforts, hiring procedures (e.g., phased hiring), a projected schedule for meeting the Workforce Goals, and alternative courses of action if it appears that the Workforce Goals will not be met.

(b) During the first thirty (30) days after the Hiring Plan is submitted, the Authority and Contractor shall negotiate in good faith solutions to any deficiencies in the Hiring Plan as reasonably determined by the Authority. At the expiration of such thirty- (30) day period, the Authority shall advise Contractor, through a written "Notice of Noncompliance," of any alleged deficiency in the Hiring Plan remaining at the close of such negotiations. The Notice of Noncompliance shall state the specific basis for the alleged deficiency(ies) and the Authority's suggested cure. Contractor shall advise the Authority within ten (10) days of its receipt of the Notice of Noncompliance whether Contractor accepts the suggested cure. If the Contractor rejects the suggested cure, either party may proceed immediately to the Enforcement Procedure pursuant to Section 1.9 below by filing a Request for Enforcement ("Request") on the Hiring Plan. The Request shall specify the issues presented and the relief requested.

1.6 Reports. Contractor shall prepare reports regarding the composition of Contractor's work force reasonably satisfactory to the Authority.

1.7 Matters Subject to Enforcement Procedure. In addition to the initial preparation of the Hiring Plan, all matters related to implementing the Hiring Plan and the Workforce Goals are subject to the Enforcement Procedure described in Section 1.9 below.

1.8 Implementation of Enforcement Procedure. The Enforcement Procedure, as provided for in Section 1.9 below, shall be the exclusive procedure for resolving any dispute concerning the interpretation or implementation of the Hiring Plan or any alleged deficiency in Contractor's Good Faith Efforts to achieve the Workforce Goals. The Enforcement Procedure shall be implemented by the Human Rights Commission of the City of County of San Francisco (the "Commission"), which shall have the powers described below unless otherwise provided by law.

(a) All subcontracts related to the Agreement ("Subcontracts") shall incorporate the provisions of this Section 1 and the Authority shall have the right to enforce said obligations, requirements and agreements against the Contractor or its subcontractors. Contractor shall require, by contract, that each subcontractor participates in Enforcement Procedure proceedings in which it may be identified in a Request, and that each subcontractor shall be bound by the outcome of such Enforcement Procedure according to the decision of the Commission.

1.9 Enforcement Procedure.

(a) If the Authority reasonably determines that Contractor has failed to use Good Faith Efforts to meet the Workforce Goals, or for any other matter subject to this Enforcement Procedure the Authority shall send a written Notice of Noncompliance to Contractor describing the basis for its determination and suggesting a means to cure any deficiencies. If Contractor does not, in the reasonable discretion of the Authority, cure the deficiency within ten (10) days, the matter shall be submitted to the following Enforcement Procedure.

(i) Prior to the filing and service of a Request, the parties to any dispute shall meet and confer in an attempt to resolve the dispute.

(ii) The Authority, Contractor or any subcontractor may commence resolution of any dispute covered by the Enforcement Procedure by filing a Request with the Commission. Where the Authority is not the complaining party, the Request shall be served on the Authority. Where the Authority is the complaining party, the Request shall be served on the Contractor at the Notice Address listed in the Agreement, and the non-compliant subcontractor, if any, if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

(iii) Service on the Contractor of the Request or any notice provided for by this Section 1 shall constitute service of the Request or notice on all subcontractors who are identified as being in alleged noncompliance in the Request. The Contractor shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such subcontractors.

(iv) The TIHDI Job Broker shall have the right to present testimony or documentary evidence at Enforcement Procedure proceedings.

(v) After the filing and the service of a Request, the parties shall negotiate in good faith for a period of ten (10) business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Enforcement Procedure, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction ("Temporary Relief"). The Commission shall determine whether the facts reasonably supported the issuance of Temporary Relief.

(vi) If the dispute is not settled within ten (10) business days, a hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties or ordered by the Commission upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on fifteen (15) days' notice. The Commission shall set the date, time and place for the Enforcement Procedure hearing(s) within the proscribed time periods by giving notice by hand delivery to the Authority and the Contractor; except, where a temporary restraining order is sought, the Commission may give notice of the hearing date, time and place to the Authority, Contractor and any affected subcontractor by telephone.

(vii) In the Enforcement Procedure proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure Section 1283.05.

(b) Commission's Decision. The Commission shall render a decision within twenty (20) days of the date that the hearing on a Request is completed; provided that where a temporary restraining order is sought, the Commission shall render a decision not later than 24

hours after the hearing on the motion. The Commission shall send the decision by certified or registered mail to the Authority, the Contractor and the subcontractor, if any.

(i) The Commission may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Contractor, the Contractor shall provide proof of service on the party as required by this Section. If the Contractor fails to provide proof of service, the Contractor shall pay \$2,500 as liquidated damages to the Authority, provided that no such damages shall be assessed if the Contractor demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure Section 1281.2.

(ii) Except as otherwise provided in this Section 1, the Commission shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, or to negotiate new agreements or provisions between the parties.

(iii) The inquiry of the Commission shall be restricted to the particular controversy that gave rise to the request for the Enforcement Procedure. A decision of the Commission issued hereunder shall be final and binding upon the Authority, Contractor, and subcontractors, if any, sent by mail to the Authority, the Contractor and the subcontractor, if any. The losing party shall pay the Commission's fees and related costs of the Enforcement Procedure. If a subcontractor is the losing party and fails to pay said fees within thirty (30) days of the decision, the Contractor shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the Commission finds that the Request was frivolous or that the Enforcement Procedure action was otherwise instituted or litigated in bad faith. Judgment upon the Commission's decision may be entered in any court of competent jurisdiction.

(c) Remedies and Sanctions. Except as may otherwise be expressly provided herein, the Commission may impose only the remedies and sanctions set forth below and only against the non-compliant party(ies):

(i) Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the Contractor's failure to make Good Faith Efforts, and/or to require Contractor and/or its subcontractors to make such Good Faith Efforts, including, but not limited to, orders enjoining the Contractor from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for employment at the Premises pending resolution of the alleged deficiency(ies) in the Hiring Plan or Contractor's implementation of the Workforce Goals.

(ii) Require the Contractor or Subcontractors to refrain from entering into new contracts related to work related to the Agreement, or from granting extensions or other modifications to existing contracts related to the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any non-compliant subcontractor until such subcontractor provides assurances satisfactory to the Authority and the Contractor of future Good Faith Efforts to comply with the Workforce Goals.

(iii) Direct the Contractor or subcontractor to cancel, terminate, suspend or cause to be canceled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the subcontractor to make Good Faith Efforts to comply with the Workforce Goals, provided, however that Subcontracts may be continued upon the condition that a program for future compliance is approved by the Authority.

(iv) If the Contractor or subcontractor is found to be in willful breach of its obligations to make Good Faith Efforts to achieve the Workforce Goals, impose financial penalties not to exceed \$50,000 or 10 percent of the total monetary consideration contemplated by the Agreement, whichever is less, for each such breach on the party responsible for the willful breach; provided, however, no penalty shall be imposed pursuant to this paragraph for the first willful breach unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. The Contractor or subcontractor may impose penalties for subsequent willful breaches whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

(v) Direct that the Contractor or subcontractor produce and provide to the Authority any records, data or reports that are necessary to determine if a violation has occurred and/or to monitor the performance of the Contractor or Subcontractor.

(vi) Issue such other relief deemed necessary to ensure that the Hiring Plan is written and implemented, and that Contractor makes Good Faith Efforts to meet its Workforce Goals, including requiring the inclusion or exclusion of specific terms or provisions in the Hiring Plan based on a determination that the term(s) added or removed further the requirements and objectives of this Section 1.

(d) Delays due to enforcement. If Contractor does not timely perform its obligations under the Agreement with the Authority because of a Commission's order against a party other than the Contractor, such order shall be deemed an event of Force Majeure, and the time for any performance by the Contractor shall be extended as provided therein; provided, however, that Contractor shall make good faith efforts to minimize any delays.

(e) Exculpatory clause. The Contractor and its subcontractors hereby forever waive and release any and all claims against the Authority for Losses arising under or related to this Section 1.

(f) California law applies. California law, including the California Arbitration Act, Code of Civil Procedure Sections 1280 through 1294.2, shall govern all the Enforcement Procedure proceedings.

(g) Designation of agent for service. Not later than five (5) days after the execution of this Agreement, the Contractor shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request and all notices provided for herein. If the Contractor has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on

1.10. Relationship to Other Employment Agreements.

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce-training agreements or interfere with consent decrees, collective bargaining agreements or existing employment contracts. In the case of collective bargaining agreements, Contractor will take primary responsibility for integrating the requirements of Contractor's Workforce Goals with any such collective bargaining agreements. As necessary, Contractor will attempt to negotiate equivalent first source hiring obligations with relevant unions.



AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Agenda Item No: 8(d)

Meeting Date: June 8, 2005

Subject: Resolution Authorizing the Executive Director to Execute an Amendment to the Contract with CH2M Hill to Extend the Term for an Additional 12 Months through June 30, 2006 (Action Item)

Staff Contact: Jack Sylvan, Mayor's Office of Base Reuse and Development
(415) 554-5201

BACKGROUND

In December 2002, the Authority formally requested the Navy commence negotiating an "Early Transfer" of former Naval Station Treasure Island ("NSTI") to the Authority pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the Defense Environmental Restoration Program ("DERP"). Under the DERP, the Navy is authorized to enter into an agreement with local agencies, such as the Authority, to carry out aspects of the Navy's remedial obligations with funds provided by the Navy after an "Early Transfer." Under an Early Transfer, the terms for transferring the Navy's remedial obligations to the Authority, including the amount of funds to be made available for investigation and remediation of contamination at the base, are set forth in an Environmental Services Cooperative Agreement ("ESCA"), to be negotiated between the Navy and the Authority.

In March 2003, the Authority issued a Request for Qualifications ("RFQ") for a guaranteed fixed-price contractor to assist the Authority in negotiations and implementation of an Early Transfer with the U.S. Navy. A selection committee concluded that the most qualified Candidate was CH2M HILL and on May 14, 2003, the Authority authorized the execution of a contract for environmental engineering and remediation services in a not-to-exceed amount of \$302,500 with a term expiration of June 30, 2004. In June 2004, the Authority amended the contract by extending the term for an additional 12 months, through June 30, 2005. In November 2004, the Authority approved a Second Amendment which modified the scope of Phase I of the contract and increased the budget by an additional \$200,000 for the modified Phase I scope.

As the Authority Board has been briefed in open and closed sessions, negotiations with the Navy for an Early Transfer of former NSTI have taken longer than initially projected and remain on going. However, staff believes it is important to continue exploring the feasibility of an Early Transfer with the Navy.

The proposed amendment only extends the term of the contract with CH2M Hill for an additional 12 months. All other terms, scope of work and budget remain the same.

RECOMMENDATION

Staff recommends approval of the amendment to the contract with CH2M Hill to continue to facilitate Early Transfer planning and term sheet negotiations with the Navy.

EXHIBITS

- A Third Amendment to Contract with CH2M Hill
- B Original Contract, and First and Second Amendments to Contract

1 **[Authorizing a twelve month extension to the contract with CH2M Hill]**

2
3 **AUTHORIZING THE EXECUTIVE DIRECTOR TO AMEND THE CONTRACT WITH CH2M**
4 **HILL TO EXTEND THE TERM THEREOF FOR AN ADDITIONAL TWELVE (12) MONTHS**
5 **FOR A TERM NOT TO EXCEED JUNE 30, 2006.**

6 WHEREAS, Former Naval Station Treasure Island is a military base located on
7 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
8 the United States of America ("the Federal Government"); and,

9 WHEREAS, The Base was selected for closure and disposition by the Base
10 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
11 subsequent amendments; and,

12 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
13 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
14 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
15 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
16 conversion of the Base for the public interest, convenience, welfare and common benefit of
17 the inhabitants of the City and County of San Francisco; and,

18 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
19 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter
20 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority
21 as a redevelopment agency under California redevelopment law with authority over the Base
22 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the
23 Base which are subject to Tidelands Trust, vested in the Authority the authority to administer
24 the public trust for commerce, navigation and fisheries as to such property; and,
25

1 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private
2 ownership, generally requires that Tidelands Trust property be accessible to the public and
3 encourages public-oriented uses of Trust property that, among other things, attract people to
4 the waterfront, promote public recreation, protect habitat and preserve open space; and,

5 WHEREAS, In December 2002, the Authority formally requested the Navy commence
6 negotiating an "Early Transfer" of former Naval Station Treasure Island ("NSTI") to the
7 Authority pursuant to the Comprehensive Environmental Response, Compensation and
8 Liability Act ("CERCLA") and the Defense Environmental Restoration Program ("DERP"); and,

9 WHEREAS, Under the DERP, the Navy is authorized to enter into an agreement with
10 local agencies, such as the Authority, to carry out aspects of the Navy's remedial obligations
11 with funds provided by the Navy after an early transfer by FOSET; and,

12 WHEREAS, The terms for transferring the Navy's remedial obligations to the Authority,
13 including the amount of funds to be made available for investigation and remediation of
14 contamination at the base, will be set forth in an Environmental Services Cooperative
15 Agreement ("ESCA"), to be negotiated between the Navy and the Authority; and,

16 WHEREAS, To ensure that the Authority can complete investigation and remediation
17 of the Base, as contemplated by the ESCA and the Consent Agreement (the "Remediation"),
18 the Authority desires to enter into a guaranteed fixed-price ("GFP") contract with an
19 environmental engineering and remediation contractor (the "Contractor") to undertake the
20 Remediation; and,

21 WHEREAS, On February 12, 2003, the Authority authorized a contract with Geomatrix
22 to assist in preparing a Request for Qualifications ("RFQ") for a GFP Contractor; and

23 WHEREAS, On March 12, 2003, the Authority authorized the Executive Director to
24 issue the RFQ; and,

1 WHEREAS, On March 17, 2003, the RFQ was issued to approximately 65 interested
2 parties, and a Supplement to the RFP was issued on April 8, 2003; and,

3 WHEREAS, CH2M HILL was identified by a Selection Committee as the most qualified
4 candidate to perform the scope of work set forth in the RFQ; and,

5 WHEREAS, On May 14, 2003, the Authority approved a contract with CH2M Hill to
6 provide environmental engineering services and assist the Authority in negotiating an Early
7 Transfer of former Naval Station Treasure Island with the Navy. Under that contract, CH2M
8 HILL is required to, among other things, work with the Authority staff and consultants and
9 meet and consult with the Navy, regulators and other interested parties, to prepare a cost
10 estimate and scope of work for the remediation effort; assist the Authority in negotiating the
11 terms and language of an ESCA, Consent Agreement and insurance policies with the
12 relevant parties; and negotiate a GFP contract with the Authority, including satisfactory
13 environmental insurance; and,

14 WHEREAS, During the past 24 months, the schedule for the negotiations with the
15 Navy has been significantly extended; and,

16 WHEREAS, On November 10, 2004, the Authority approved an amendment to the
17 contract to modify the scope of services and increase the amount of the contract by an
18 additional \$200,000 for a total not to exceed amount of \$302,500 for Phase 1 services; and,

19 WHEREAS, The Authority wishes to continue to explore the feasibility of an Early
20 Transfer through the vehicle of term sheet negotiations with the Navy, and requires the
21 continued services of CH2M Hill for these purposes; and,

22 WHEREAS, The Authority wishes to extend the term of such contract by an additional
23 twelve (12) months with no increase in the total amount of the contract; now therefore be it

24 RESOLVED, That the Authority hereby authorizes the Executive Director to execute an
25 amendment to the professional services contract with CH2M HILL to extend the term of the

1 contract by an additional twelve (12) months not to exceed June 30, 2006, at no increase in
2 the total amount of the contract, all in substantially the form of the amendment attached to
3 this Resolution as Exhibit A, and to make any necessary changes to the contract that reflect
4 the intent of this resolution.
5

6 **CERTIFICATE OF SECRETARY**

7 *I hereby certify that I am the duly elected and acting Secretary of the Treasure Island*
8 *Development Authority, a California nonprofit public benefit corporation, and that the above*
9 *Resolution was duly adopted and approved by the Board of Directors of the Authority at a*
10 *properly noticed meeting on June 8, 2005.*
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Susan Po-Rufino, Secretary
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**TREASURE ISLAND DEVELOPMENT AUTHORITY
CITY AND COUNTY OF SAN FRANCISCO**

THIRD AMENDMENT

THIS THIRD AMENDMENT (this "Amendment") is made as of July 1, 2005, in San Francisco, California, by and between CH2M Hill Constructors, Inc., a Delaware corporation, ("Contractor"), and the Treasure Island Development Authority, a municipal corporation ("Authority"), acting by and through its Executive Director ("Executive Director").

RECITALS

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated May 14, 2003 between Contractor and Authority, as amended by a First Amendment dated July 1, 2004 and a Second Amendment dated September 16, 2004.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

(a) Section 2. Term of the Agreement, is hereby amended to read as follows:

Subject to Section 1, the term of this Agreement shall be from May 14, 2003 to June 30, 2006.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

AUTHORITY

Recommended by:

Tony Hall, Executive Director
Treasure Island Development Authority

Approved as to form

Dennis J. Herrera
City Attorney

By

Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

James Greeley, Vice President
CH2M HILL Constructors, Inc.
115 Perimeter Place N.E. Suite 700
Atlanta, GA 30346
(770) 604-9095
FEIN: 84-1230545
Vendor No: 62917

**TREASURE ISLAND DEVELOPMENT AUTHORITY
CITY AND COUNTY OF SAN FRANCISCO**

SECOND AMENDMENT

THIS SECOND AMENDMENT (this "Amendment") is made as of September 16, 2004, in San Francisco, California, by and between CH2M Hill Constructors, Inc., a Delaware corporation, ("Contractor"), and the Treasure Island Development Authority, a municipal corporation ("Authority"), acting by and through its Executive Director ("Executive Director").

RECTALS

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated May 14, 2003 between Contractor and Authority, as amended by a First Amendment dated July 1, 2004.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

(a) **Appendix A, Services to be Provided by Contractor,** is hereby amended to read as follows:

Appendix A

Services to be Provided by Contractor

1. Description of Services

CH2M Hill ("Contractor") shall provide all labor, materials, and equipment necessary to provide environmental remediation services in support of an Early Transfer of former naval station Treasure Island to the Authority as stated in the Request for Qualifications for a Contractor to Provide Environmental Engineering and Remediation Services at former naval station Treasure Island issued March 17, 2003.

PHASE 1a SERVICES

Task One: Data Evaluation

Contractor will review Navy and other investigator reports of historical studies, field investigations, remedial designs, pilot studies, O&M, site closure, ground water monitoring reports and other available information pertaining to the environmental conditions and status of remediation at former naval station Treasure Island.

Task Two: Meetings

Contractor will participate in meetings, technical presentations and substantive discussions with the Authority, Navy, State of California Department of Toxic Substance Control (DTSC), regulatory agencies, insurers, and public to discuss the early transfer, technical issues, long term reuse plan, and other topics related to remediation at former naval station Treasure Island.

Task Three: Calculation of Navy Cost to Complete

Contractor will evaluate and prepare cost estimate of the Navy's Cost to Complete (CTC) based on their current remediation schedule, efficiency factors, unknowns discovered during remediation, contingencies and overruns on known Scope of Work (SOW), existing Program Management and overhead costs.

Task Four: TICD Development Integration with GFPC

Contractor will work with TIDA and TICD to determine differences between Environmental Services Cooperative Agreement (ESCA) SOW and actual development needs such as asbestos, lead-based paint remediation and incidental expenses, evaluate integration of remediation with the development, prepare SOW and cost estimates for differences, prepare presentations, attend meetings and prepare an updated SOW and cost estimate for the Guaranteed Fixed Price (GFP) Contract and insurance policies.

Task Five: Presentation of Results

Contractor will make technical presentations and participate in meetings with the Authority and the City to present results of its remediation cost estimate and to initiate the process to secure GFP insurance.

PHASE 1b SERVICES

Task One: Navy Negotiations to Reach ESCA Term Sheet and Meetings

Provide assistance in the development of negotiation strategies and cost negotiations with the Navy, refine and finalize ESCA offer and develop ESCA Term Sheet. Contractor will also maintain a limited participation in Navy activities in order to stay abreast of remediation efforts and ongoing studies, attendance at monthly meetings such as BCT, RAB, technical scoping meetings, meetings to review Navy status of investigations, initial findings meetings, regulator review comment meetings, and other meetings related to Navy activities and documents. Task duration is assumed to run from October 2004 through March 2005.

Task Two: Regulatory Negotiations to Reach ESCA Term Sheet

Contractor will coordinate with the regulatory agencies, to the extent necessary, to reach a ESCA Term Sheet. Coordination is anticipated to include meetings to discuss regulatory issues related to site closure, potential resolution of differences between Navy and ESCA SOW, discussion of interim and potential final land use or institutional controls.

Task Three: Insurance Negotiations to Reach ESCA Term Sheet

Contractor will coordinate with the Insurance Company, to the extent necessary, to prepare an ESCA Term Sheet. Coordination is anticipated to include meetings to convey GFP Contract SOW and revised remediation cost estimate, and obtain preliminary indications for the Cost Cap Environmental Insurance Policy.

PHASE TWO SERVICES

Phase Two services would only be initiated if TIDA and CH2M Hill successfully reach agreement with the Navy on a term sheet for the ESCA. Upon agreement by TIDA and the Navy on a term sheet for transfer of environmental responsibilities at former Naval Station Treasure Island, approval for entering into the Phase Two services and budget would be required by the TIDA Board of Directors to proceed with the scope of work outlined below.

Task One: Finalize ESCA Negotiations and Agreements with the Navy

Contractor will provide advice and assistance in the development of final negotiations with the Navy, refine and finalize ESCA offer. Negotiate terms and conditions for ESCA and Navy retained sites and sites transferred under the ESCA.

Task Two: Finalize Regulatory Negotiations

Contractor will lead negotiations for the Consent Agreement and provide technical support for Land Use Controls and Institutional Controls, provide technical assistance with other agreements for regulatory agencies such as Regional Water Quality Control Board (RWQCB), State Lands Commission (SLC), and others.

Task Three: Finalize Insurance Negotiations

Contractor will lead final price and term negotiations for a Cost Cap environmental insurance policy, and provide technical support for the Pollution Legal Liability policy negotiations. Prepare final technical presentations and provide final ESCA SOW and cost estimates for the GFP Contract SOW covered under the policy.

Task Four: Guaranteed Fixed Price Remediation Contract Negotiations

Contractor will assist, support and participate with the Authority in negotiating a Guaranteed Fixed Price Contract with Contractor to perform the remediation.

2. Reports

Contractor shall submit written reports as requested by the Authority. Format for the content of such reports shall be determined by the Authority. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Authority will be Jack Sylvan.

(b) Appendix B, Calculation of Charges, is hereby amended to read as follows:

**Appendix B
Calculation of Charges**

Phase 1a Budget

Task	Description	Budget	Amount to be Paid by Authority
1	Data evaluation	\$60,000	\$30,000
2	Meetings	\$55,000	\$27,500
3	Calculation of Navy Cost to Complete	\$90,000	\$67,500
4	TICD Development Integration with GFPC	65,000	\$65,000
5	Presentation of Results	\$45,000	\$22,500
TOTAL		\$315,000	\$212,500

Compensation for Phase 1a services shall be made as one lump sum payment on or before the last day of the month following the month in which Contractor submits an invoice for the completion of Phase I work, and the Executive Director, in his sole discretion, concludes the Phase I work has been performed successfully. Compensation for Phase I shall not exceed **two hundred twelve thousand five hundred dollars (\$212,500)**.

Phase Ib Budget

Task	Description	Budget	Amount to be Paid by Authority
1	Navy negotiations to Reach ESCA Term Sheet and Meetings	\$35,000	\$35,000
2	Regulatory negotiations to Reach ESCA Term Sheet	\$30,000	\$30,000
3	Insurance negotiations to Reach ESCA Term Sheet	\$25,000	\$25,000
Total		\$90,000	\$90,000

Compensation for Phase Ib services shall be made in monthly payments on or before the last day of each month for work that the Executive Director, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month. Compensation for Phase II shall not exceed **ninety thousand dollars** (\$90,000).

Phase II Budget

Task	Description	Budget	Amount to be Paid by Authority**
1	Finalize Navy ESCA negotiations	\$315,000	\$157,500
2	Finalize Regulatory negotiations	\$371,000	\$185,500
3	Finalize Insurance negotiations	\$233,000	\$116,500
4	GFP contract negotiations	n/a	n/a
Total		\$919,000	\$459,500

**Only paid by Authority if Early Transfer and GFP Contract are not consummated, otherwise 100% offset against GFP Contract invoices.

Compensation for Phase II services shall be made in monthly payments on or before the last day of each month for work that the Executive Director, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month. The Contractor shall invoice the Authority for the amounts shown as "Budget" and the Authority will pay only one half of the amount invoiced up to the not to exceed amount of \$459,500. Compensation for Phase II shall not exceed **four hundred fifty nine thousand five hundred dollars** (\$459,500).

If the Environmental Services Cooperative Agreement, Consent Agreements, and Guaranteed Fixed Price Contract are successfully negotiated, the Contractor will credit the amount paid by the Authority to the Contractor under Phase II of this Agreement to the invoices submitted by the Contractor under the Guaranteed Fixed Price Contract.

Invoices shall identify personnel performing work under this Agreement, their hourly rates, and number of hours worked per task. The hourly rates to be charged by job classification are listed below. In no event shall the total amount of this Agreement exceed **seven hundred sixty two thousand dollars** (\$762,000).

(c) Section 5, Compensation, is hereby amended to read as follows:

Compensation for Phase Ib services shall be made as one lump sum payment on or before the last day of the month following the month in which Contractor submits an invoice for the completion of Phase I work, and the Executive Director, in his sole discretion, concludes the Phase I work has been performed successfully. Compensation for Phase I shall not exceed **two hundred twelve thousand five hundred dollars** (\$212,500).

Compensation for Phase 1b services shall be made in monthly payments on or before the last day of each month for work that the Executive Director, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month. Compensation for Phase II shall not exceed **ninety thousand dollars (\$90,000)**.

Phase 2 services would only be initiated if TIDA successfully reaches agreement with the Navy on a term sheet for the Environmental Services Cooperative Agreement. Upon agreement by TIDA and the Navy on a term sheet for transfer of environmental responsibilities at former Naval Station Treasure Island, approval for entering into the Phase 2 services and budget would be required by the TIDA Board of Directors to proceed with the scope of work outlined in Appendix A.

Compensation for Phase 2 services shall be made in monthly payments on or before the last day of each month for work that the Executive Director, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month. The Contractor shall invoice the Authority for the amounts shown as "Budget" in Appendix II, and the Authority will pay only one half of the amount invoiced, up to the not to exceed amount of \$459,500. Compensation for Phase 2 shall not exceed **four hundred fifty nine thousand five hundred dollars (\$459,500)**.

If the Environmental Services Cooperative Agreement (ESCA), Consent Agreements, and Guaranteed Fixed Price Contract (GFPC) are successfully negotiated, the Contractor will credit the amount paid by the Authority to the Contractor under Phase 2 of this Agreement to the invoices submitted by the Contractor under the Guaranteed Fixed Price Contract.

Invoices shall identify personnel performing work under this Agreement, their hourly rates, and number of hours worked per task. In no event shall the total amount of this Agreement exceed **seven hundred sixty two thousand dollars (\$762,000)**.

In no event shall Authority and/or City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Form 7, "Prime Consultant/Joint Venture Partner(s) and Sub-consultant Participation Report." If HRC Form 7 is not submitted with Contractor's invoice, the Controller will notify the Authority, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Form 7 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Form 9, "Sub-Consultant Payment Affidavit," verifying that all subcontractors have been paid and specifying the amount.

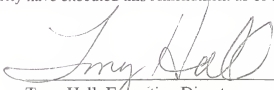
3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

AUTHORITY

Recommended by:



Tony Hall, Executive Director
Treasure Island Development Authority

Approved as to form

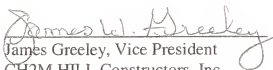
Dennis J. Herrera
City Attorney

By 
Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.


James Greeley, Vice President
CH2M HILL Constructors, Inc.
115 Perimeter Place N.E. Suite 700
Atlanta, GA 30346
(770) 604-9095
FEIN: 84-1230545
Vendor No: 62917

Book 10

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Effective Date
10/1/10

10/1/10

Page 10

**TREASURE ISLAND DEVELOPMENT AUTHORITY
CITY AND COUNTY OF SAN FRANCISCO**

FIRST AMENDMENT

THIS FIRST AMENDMENT (this "Amendment") is made as of July 1, 2004, in San Francisco, California, by and between CH2M Hill Constructors, Inc., a Delaware corporation, ("Contractor"), and the Treasure Island Development Authority, a municipal corporation ("Authority"), acting by and through its Executive Director ("Executive Director").

RECITALS

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated May 14, 2003 between Contractor and Authority.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

(a) **Section 2.** Section 2, Term of the Agreement, currently reads as follows:

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from May 14, 2003 to June 30, 2004.

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from May 14, 2003 to June 30, 2005.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

AUTHORITY

Recommended by:

Annemarie Conroy, Executive Director
Treasure Island Development Authority

Approved as to form

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

James Greeley, Vice President
CH2M HILL Constructors, Inc.
115 Perimeter Place N.E. Suite 700
Atlanta, GA 30346
(770) 604-9095
FEIN: 84-1230545
Vendor No: 62917

City and County of San Francisco
TREASURE ISLAND DEVELOPMENT AUTHORITY
Treasure Island Building One, 410 Palm Avenue
San Francisco, California 94130

Consulting and Reimbursement Agreement between the

Treasure Island Development Authority

and

CH2M Hill Constructors, Inc.

This Agreement is made this fourteenth day of May 2003, in the City and County of San Francisco, State of California, by and between CH2M Hill Constructors, Inc., a Delaware Corporation, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a municipal corporation, hereinafter referred to as "Authority," acting by and through its Executive Director, hereinafter referred to as "Executive Director".

Recitals

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (l) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, In December 2002, the Authority formally requested that the Navy commence negotiating an Early Transfer of former Naval Station Treasure Island to the Authority pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the Defense Environmental Restoration Program ("DERP"); and,

WHEREAS, Under the DERP, the Navy is authorized to enter into an agreement with local agencies, such as the Authority, to carry out aspects of the Navy's remedial obligations with funds provided by the Navy after an early transfer by FOSET; and

WHEREAS, The terms for transferring the Navy's remedial obligations to the Authority, including the amount of funds to be made available for investigation and remediation of contamination at the Base, will be set forth in an Environmental Services Cooperative Agreement ("ESCA"), to be negotiated between the Navy and the Authority; and,

WHEREAS, Other agreements will be negotiated with regulatory agencies to ensure their concurrence with the investigation and remediation proposal that forms the basis of the ESCA; and

WHEREAS, To ensure that the Authority can complete investigation and remediation of the Base, as contemplated by the ESCA and other regulatory agreements, (the "Remediation"), the Authority desires to enter into a guaranteed fixed-price ("GFP") contract with an environmental engineering and remediation contractor (the "Contractor") to assist in negotiating an ESCA and other Early Transfer documents and to ultimately undertake the Remediation; and,

WHEREAS, On March 12, 2003, the Authority authorized the Executive Director to issue a Request for Qualifications ("RFQ") for a GFP Contractor to assist the Authority in negotiations and implementation of an Early Transfer; and

WHEREAS, On March 17, 2003, the RFQ was issued to approximately 65 interested parties, and a Supplement to the RFQ was issued on April 8, 2003; and

WHEREAS, On April 22, 2003, four Statements of Qualifications ("SOQ") were received in the Authority's offices; and

WHEREAS, On May 5, 2003, a Selection Committee composed of staff from the Authority, the Department of Public Works, the Mayor's Office of Economic Development, and the Port of San Francisco evaluated the SOQs and conducted oral interviews of all four Candidates; and

WHEREAS, the Selection Committee rated CH2M HILL as the most qualified candidate to perform the scope of work set forth in the RFQ; and

WHEREAS, Under the terms of a contract for Phases I and II, the Contractor will be required to, among other things, work with the Authority staff and consultants and meet and consult with the Navy, regulators and other interested parties, to prepare a cost estimate and scope of work for the remediation effort culminating in the preparation of an initial cost proposal to the Authority for the scope of work: assist the Authority in negotiating the terms and language of an ESCA, Consent Agreement and insurance policies with the relevant parties; and negotiate a GFP contract with the Authority, including satisfactory environmental insurance; and

WHEREAS, Assuming the Authority is able to negotiate an ESCA and other agreements with regulators necessary to complete an Early Transfer, it is anticipated that the Authority will be able to successfully and expeditiously negotiate a separate GFP contract with the Contractor to bind appropriate insurance policies and undertake and complete the Remediation. The Authority expects that the GFP contract will completely protect it from any and all costs or residual liabilities in excess of the amount of the ESCA; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by the Authority as set forth under this Contract; and

WHEREAS, approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number **4132-02/03 on June 16, 2003**;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("Charter"). Charges will accrue only after prior written authorization certified by the Controller of the City and County of San Francisco ("Controller"), and the amount of Authority's and/or City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority and/or City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

The Authority and/or the City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority and/or City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from May 14, 2003 to June 30, 2004.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation for Phase I services shall be made as one lump sum payment on or before the last day of the month following the month in which Contractor submits an invoice for the completion of Phase I work, and the Executive Director, in her sole discretion, concludes the Phase I work has been performed successfully. Compensation for Phase I shall not exceed **one hundred two thousand five hundred dollars (\$102,500)**.

Compensation for Phase II services shall be made in monthly payments on or before the last day of each month for work that the Executive Director, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. The Contractor shall invoice the Authority for the amounts shown as "Budget" in Appendix II, and the Authority will pay only one half of the amount invoiced, up to the not to exceed amount of \$200,000. Compensation for Phase II shall not exceed **two hundred thousand dollars (\$200,000)**. Invoices shall identify personnel performing work under this Agreement, their hourly rates, and number of hours worked per task. If the Environmental Services Cooperative Agreement (ESA), Consent Agreements, and Guaranteed Fixed Price Contract (GFPC) are successfully negotiated, the Contractor will credit the amount paid by the Authority to the Contractor under Phase II of this Agreement to the invoices submitted by the Contractor under the Guaranteed Fixed Price Contract.

In no event shall the total amount of this Agreement exceed **three hundred two thousand five hundred dollars (\$302,500)**.

In no event shall Authority and/or City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Form 7, "Prime Consultant/Joint Venture Partner(s) and Sub-consultant Participation Report." If HRC Form 7 is not submitted with Contractor's invoice, the Controller will notify the Authority, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Form 7 is not explained to the Controller's

satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Form 9, "Sub-Consultant Payment Affidavit," verifying that all subcontractors have been paid and specifying the amount.

6. Guaranteed Maximum Costs

a. The Authority and/or City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority and/or City are not authorized to request, and the Authority and/or City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority and/or City are not authorized to offer or promise, nor is the Authority and/or City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment: Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by Authority and or City to Contractor shall be subject to audit by Authority and/or City.

Payment shall be made by Authority and/or City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims: Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Authority and/or City for three times the amount of damages which the Authority and/or City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority and/or City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority and/or City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority and or City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority and/or City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority and/or City; (c) conspires to defraud the Authority and or City by getting a false claim allowed or paid by the Authority and/or City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority and/or City; or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority and/or City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority and or City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties.

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon the Contractor as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority and/or City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority and/or City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority and/or City to enable the Authority and/or City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority and/or City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and/or City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority and/or City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority and/or City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

Authority and/or City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority and/or City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority and/or City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority and/or City, nor be entitled to participate in any plans, arrangements, or distributions by Authority and/or City pertaining to or in connection with any retirement, health or other benefits that Authority and/or City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and/or City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority and/or City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority and/or City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should Authority and/or City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority and/or City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority and/or City, upon notification of such fact by Authority and/or City, Contractor shall promptly remit such amount due or arrange with Authority and/or City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority and/or City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority and/or City's financial liability so that Authority and/or City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insureds the Authority and City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty days' advance written notice to Authority and City of cancellation mailed to the following address:

Treasure Island Development Authority
Treasure Island Building One
410 Avenue of Palms
San Francisco, California 94130
Attn: Executive Director

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority and/or City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority and/or City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must furnish to Authority and/or City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to Authority and/or City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Authority and/or City request.

h. Approval of the insurance by Authority and/or City shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless Authority and/or City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, to the proportionate extent resulting directly or indirectly from Contractor's negligent performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Authority and/or City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be

imposed on Authority and/or City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and/or City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify Authority and/or City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and/or City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and/or City and continues at all times thereafter.

Contractor shall indemnify and hold Authority and/or City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority and/or City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

No party to this Agreement shall be liable to another party under this Agreement for incidental, special or consequential damages unless expressly authorized in writing by the party to be charged.

18. Liability of Authority and/or City

AUTHORITY AND/OR CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY AND/OR CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left blank by agreement of parties.

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, or 50.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority and/or City to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority and/or City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority and/or City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority and/or City on demand all costs and expenses incurred by Authority and/or City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority and/or City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and/or City and Contractor all damages, losses, costs or expenses incurred by Authority and/or City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. Authority and/or City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority and/or City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and/or City and to minimize the liability of Contractor and Authority and/or City to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority and/or City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority and/or City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At Authority's and/or City's direction, assigning to Authority and/or City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority and/or City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to Authority's and/or City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that Authority and/or City designates to be completed prior to the date of termination specified by Authority and/or City.

(7) Taking such action as may be necessary, or as the Authority and/or City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority and/or City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority and/or City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work Authority and/or City directed Contractor to perform prior to the specified termination date, for which services or work Authority and/or City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 13% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority and/or City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 10% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority and/or City or otherwise disposed of as directed by the Authority and/or City.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority and/or City, and any other appropriate credits to Authority and/or City against the cost of the services or other work.

d. In no event shall Authority and/or City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority and/or City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority and/or City may deduct: (1) all payments previously made by Authority and/or City for work or other services covered by Contractor's final invoice; (2) any claim which Authority and/or City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority and/or City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority and/or City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's and/or City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 47 through 51, and 54.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority and/or City, and deliver in the manner, at the times, and to the extent, if

any, directed by Authority and/or City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority and/or City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

a. During the term of this Agreement, Contractor will not work for or assist in any way the Navy, any developer or proposed developer, including, without limitation, Treasure Island Community Development, LLC, or any other entity not a party to this Agreement, on any project or issue related to the development, presentation or negotiation of Early Transfer activities which are the subject of this Agreement without the prior written authorization of the Authority.

b. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of the City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

24. Proprietary or Confidential Information of Authority and/or City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and/or City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority and/or City. Contractor agrees that all information disclosed by Authority and/or City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority and/or City:

Annemarie Conroy, Executive Director
Treasure Island Development Authority
Treasure Island Building One
410 Avenue of Palms
San Francisco, California 94130
Phone: 415/274-0660
Fax: 415/274-0299
Email: Annemarie.Conroy@sfgov.org

To Contractor:

Phil Burke, General Project Manager
CH2M HILL
2485 Natomas Park Drive Suite 600
Sacramento, CA 95833
Phone: 916/286-0423
Fax: 916/614-3410
Email: Pburke@ch2m.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority and/or City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority and/or City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority and/or City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority and/or City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority and/or City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority and/or City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority and/or City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority and/or City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

Innovative Technical Solutions, Inc. (ITSI) is an approved subcontractor under this Agreement.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority and/or City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority and/or City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

33. Left blank by agreement of the parties.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, Authority and/or City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Authority and/or City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with

domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to S.F. Administrative Code §12.F.5, the Authority and/or City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The Authority and or City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to S.F. Administrative Code §12I.5(b), the Authority and/or City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Authority and or City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 21A of the S.F. Administrative Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees

not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with S.F. Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between Authority and/or City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in Authority and/or City funds or Authority and/or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority and/or City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the Authority and/or City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the Authority and/or City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

43. Requiring Minimum Compensation for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.ci.sf.ca.us/MCO. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the Authority and/or City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Contractor shall increase the hourly gross compensation to \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the Authority and/or City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The Authority and/or City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Authority and/or City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the Authority and/or City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the Authority and/or City. Any amounts realized by the Authority and/or City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum

Compensation.

e. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the Authority and/or City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the Authority and/or City with access to pertinent records after receiving a written request from the Authority and/or City to do so and being provided at least five (5) business days to respond.

i. The Authority and/or City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority and/or City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority and/or City may pursue any of the remedies set forth in this Section against Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the

effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at www.ci.sf.ca.us/HCAO. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority and/or City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority and/or City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Authority and/or City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority and/or City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify Authority and/or City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Authority and/or City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that Authority and/or City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall keep itself informed of the current requirements of the HCAO.

h. Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

i. Contractor shall provide Authority and/or City with access to records pertaining to compliance with HCAO after receiving a written request from Authority and/or City to do so and being provided at least five business days to respond.

j. Authority and/or City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with Authority and/or City when it conducts such audits.

k. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with Authority and/or City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the Authority and/or City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement.

(1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.;

(2) Contractor will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers;

(3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

c. Hiring Decisions.

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the first source hiring process.

The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with Authority and/or City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Authority and/or City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the Authority and/or City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new Authority and/or City contract for a period of two (2) years. Funds paid to Contractor for services performed hereunder and which were not for a Political Activity, are not subject to the restrictions of San Francisco Administrative Code Chapter 12.G.

47. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

48. Left blank by agreement of parties.

49. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

50. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

51. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 45.

52. Compliance with Laws

Contractor shall keep itself fully informed of the Authority and/or City's Charter, codes, ordinances and regulations of the Authority and/or City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

53. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as

subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

54. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

AUTHORITY

Recommended by:


Annemarie Conroy, Executive Director
Treasure Island Development Authority

Approved as to Form:

Dennis J. Herrera
City Attorney

By 
Deputy City Attorney


Approved:


Judith A. Blackwell
Director, Office of Contract Administration

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.


James Greeley, Vice President
CH2M Hill Constructors Inc.
115 Perimeter Place N.E. Suite 700
Atlanta, GA 30346
Telephone: (770)604-9095
FEIN: 84-1230545

APPENDICES

- A. Services to be Provided by Contractor
- B. Calculation of Charges

Appendix A

Services to be Provided by Contractor

1. Description of Services

CH2M Hill ("Contractor") shall provide all labor, materials, and equipment necessary to provide environmental remediation services in support of an Early Transfer of former naval station Treasure Island to the Authority as stated in the Request for Qualifications for a Contractor to Provide Environmental Engineering and Remediation Services at former naval station Treasure Island issued March 17, 2003.

PHASE ONE SERVICES

Task One: Data Evaluation

Contractor will review Navy and other investigator reports of historical studies, field investigations, remedial designs, pilot studies, O&M, site closure, ground water monitoring reports and other available information pertaining to the environmental conditions and status of remediation at former naval station Treasure Island.

Task Two: Meetings

Contractor will participate in meetings, technical presentations and substantive discussions with the Authority, Navy, State of California Department of Toxic Substance Control (DTSC), regulatory agencies, insurers, and public to discuss the early transfer, technical issues, long term reuse plan, and other topics related to remediation at former naval station Treasure Island.

Task Three: Remediation Cost Estimate

Contractor will evaluate remedial alternatives and develop remediation cost estimates.

Task Four: Presentation of Results

Contractor will make technical presentations and participate in meetings with the Authority and the City to present results of its remediation cost estimate and to initiate the process to secure Guaranteed Fixed Price (GFP) insurance.

PHASE TWO SERVICES

Task One: Navy Negotiations

Contractor will provide advice and assistance in the development of negotiation strategies, and negotiations with the Navy, and will refine and finalize offer.

Task Two: Regulatory Negotiations

Contractor will provide advice and assistance in negotiations for the Consent Agreement and other agreements with regulatory agencies.

Task Three: Insurance Negotiations

Contractor will implement the process to obtain price and term proposals for an environmental insurance policy, selection of an insurer, and negotiation of policy language.

Task Four: Guaranteed Fixed Price Remediation Contract Negotiations

Contractor will assist, support and participate with the Authority in negotiating a Guaranteed Fixed Price Contract with Contractor to perform the remediation.

2. Reports

Contractor shall submit written reports as requested by the Authority. Format for the content of such reports shall be determined by the Authority. The timely submission of all reports is a necessary and material term and condition of

this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Authority will be Jack Sylvan.

Appendix B
Calculation of Charges

Phase I Budget

Task	Description	Budget	Amount to be Paid by Authority
1	Data evaluation	\$60,000	\$30,000
2	Meetings	\$55,000	\$27,500
3	Remediation Cost Estimate	\$45,000	\$22,500
4	Presentation of Results	\$45,000	\$22,500
TOTAL		\$205,000	\$102,500

Phase II Budget

Task	Description	Budget	Amount to be Paid by Authority
1	Navy negotiations	\$200,000	\$100,000
2	Regulatory negotiations	\$150,000	\$75,000
3	Insurance negotiations	\$50,000	\$25,000
4	GFP contract negotiations	n a	n a
Total			\$200,000

Compensation for Phase I services shall be made as one lump sum payment on or before the last day of the month following the month in which Contractor submits an invoice for the completion of Phase I work, and the Executive Director, in her sole discretion, concludes the Phase I work has been performed successfully. Compensation for Phase I shall not exceed **one hundred two thousand five hundred dollars (\$102,500)**.

Compensation for Phase II services shall be made in monthly payments on or before the last day of each month for work that the Executive Director, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. The Contractor shall invoice the Authority for the amounts shown as "Budget" and the Authority will pay only one half of the amount invoiced up to the not to exceed amount of \$200,000. Compensation for Phase II shall not exceed **two hundred thousand dollars (\$200,000)**. Invoices shall identify personnel performing work under this Agreement, their hourly rates, and number of hours worked per task. The hourly rates to be charged by job classification are listed below. If the Environmental Services Cooperative Agreement (ESA), Consent Agreements, and Guaranteed Fixed Price Contract (GFPC) are successfully negotiated, the Contractor will credit the amount paid by the Authority to the Contractor under Phase II of this Agreement to the invoices submitted by the Contractor under the Guaranteed Fixed Price Contract.

In no event shall the total amount of this Agreement exceed **three hundred two thousand five hundred dollars (\$302,500)**.

CH2M HILL Treasure Island Phase 1 and 2 Hourly Rates		
	Staff	Hourly Rate
1	Program Mgr	\$ 178.90
2	Senior Technical Consultant	\$ 195.00
3	Project Engineer	\$ 163.50
4	Associate Engineer	\$ 135.60
5	Field Engineer	\$ 81.10
6	Staff Engineer 2	\$ 124.80
7	Staff Engineer 1	\$ 103.03
8	Cost Estimator	\$ 132.00
9	Engineering/Environmental Sr. Tech	\$ 97.80
10	Engineering/Environmental Jr. Tech	\$ 70.70
11	Graphics/GIS/Database Technican	\$ 81.10
12	Office/Clerical/Accounting	\$ 72.67
13	Project Controls Engineer	\$ 86.30
14	Contracts Manager	\$ 91.50
15	Health & Safety Officer	\$ 86.30
16	Expenses	Actual Costs

The above rates shall be escalated each calendar year on January 1st by 4% over the previous year or by the percent increase in DRI Professional/Technical index, whichever is higher.

AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Subject: Resolution Authorizing the Executive Director To Execute a Sublease and To Execute a Professional Services Agreement with Catholic Charities CYO to Operate Building 402 as a Gymnasium through June 30, 2006 (Action Item)

Agenda Items No. 8(e)
Meeting of June 8, 2005

Contact/Phone: Tony Hall, Executive Director
Marc McDonald
(415) 274-0660

SUMMARY OF PROPOSED ACTION:

Staff requests authorization to:

- A. Enter into a Sublease with the Catholic Charities CYO at no rent for use of Building 402, known as the Gymnasium commencing July 1, 2005 and expiring on June 30, 2006.
- B. Enter into a Professional Services Agreement with Catholic Charities CYO to provide recreational programming services at the Treasure Island Gymnasium.

BACKGROUND:

On June 28, 2004, the Executive Director executed a month-to-month sublease with the Treasure Island Homeless Development Initiative (TIHDI) for use of Building 402, commonly referred to as the Gymnasium, which is located on Avenue M and 9th Street on Treasure Island. The term of the sublease terminated on December 1, 2004. At its regular meeting of November 10, 2004, the Treasure Island Board of Directors authorized extension of the sublease with TIHDI through June 30, 2005.

Currently, Building 402 serves as a Gymnasium that is open and available to all Treasure Island residents and residents of the City and County of San Francisco. The facility has been a resounding success for the residents and youth of Treasure Island and the City of San Francisco. The Gym is open five days a week. Activities available at the gym range from free play through youth league basketball tournaments. TIHDI has been so successful in the development of popular programming at this facility that they have determined that an experienced recreation services provider can enhance the programming available through the facility. The operator identified by TIHDI to fill this need was Catholic Charities CYO.

Founded in response to the hundreds of children left orphaned in the wake of San Francisco's 1906 earthquake, for nearly 100 years, Catholic Charities has been a leader in providing human services to children, families and seniors in need. Through its CYO (Catholic Youth Organization) Youth Services programs, Catholic Charities has provided quality recreational

activities for the Bay Area's children and youth for over 50 years. Fifteen thousand children and youth play CYO sports each year. Nine thousand attend CYO summer camp, retreats or participate in Caritas Creek Environmental Education programs at CYO facilities in the Sonoma County redwoods. As an established member of the community with an established track-record in providing quality recreational activities for all Bay Area residents, Catholic Charities is uniquely qualified to maximize the value of the gymnasium for all residents of Treasure Island and the City of San Francisco.

Catholic Charities CYO has agreed to operate the gymnasium for the benefit of Treasure Island and the City of San Francisco for a period of one year. During that period, Catholic Charities CYO will initiate additional programming to attract even more users and work with TIDA to identify opportunities to continue the upgrade of the facility. In exchange for operating the facility, Catholic Charities will occupy the building in accord with a no-cost sublease between TIDA and Catholic Charities, CYO. Additionally, Catholic Charities, CYO will provide recreational and programming services in the gym in accord with the terms and conditions of a professional services agreement with TIDA. TIDA will provide Catholic Charities \$165,000 in funding to support programming in the gymnasium. TIHDI has committed to providing an additional \$50,000 for Catholic Charities' services.

RECOMMENDATION:

The Building 402 Gymnasium serves an important public role in the life of Treasure Island. It is a recreational and community resource for the residents of Treasure Island and a recreational facility for the citizens of San Francisco. Staff recommends approval to enter into a Sublease with Catholic Charities CYO at no rent to occupy the building for a term commencing July 1, 2005 and expiring on June 30, 2006. Staff further recommends approval to enter into a professional services agreement with Catholic Charities CYO for the organization to provide recreational programming and other services at the building in exchange for \$165,000 from TIDA for a term of one year commencing on July 1, 2005 and expiring on June 30, 2006.

EXHIBIT:

- A. Sublease Between TIDA and Catholic Charities CYO for Treasure Island Gymnasium.
- B. Professional Services Agreement between TIDA and Catholic Charities CYO for Programming Services at Treasure Island Gymnasium.

1 [Approving an Agreement and Sublease with Catholic Charities for Building 402]
2 Authorizing the Executive Director to execute a sublease and agreement with Catholic
3 Charities, CYO for use of Building 402 for the use of the gymnasium and the provision
4 of recreational programming services for a term commencing July 1, 2005 and ending
5 June 30, 2006.

6 WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed
7 Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a
8 nonprofit public benefit corporation known as the Treasure Island Development Authority (the
9 "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction,
10 rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for
11 the public interest, convenience, welfare and common benefit of the inhabitants of the City
12 and County of San Francisco; and,

13 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
14 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter
15 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority
16 as a redevelopment agency under California redevelopment law with authority over the Base
17 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the
18 Base which are subject to the Tidelands Trust, vested in the Authority the authority to
19 administer the public trust for commerce, navigation and fisheries as to such property; and,

20 WHEREAS, THE Authority and the United States of America, acting by and through
21 the Department of the Navy entered into Master Lease (Lease No. N6247499RP00B08) on
22 April 5, 1997 for use of Building 402 commonly referred to as the Gymnasium, together with a
23 non-exclusive right to use certain parking areas adjacent thereto; and,

24 WHEREAS, The Master Lease enables the Authority to sublease the leasehold
25 premises for interim use; and,

1 WHEREAS, the Gymnasium was subleased to The Treasure Island Homeless
2 Development Initiative ("TIHDI) as a Gymnasium that has been open and available to all
3 Residents of the City and County of San Francisco; and,

4 WHEREAS, the sublease with TIHDI for the Gymnasium expires on June 30, 2005;
5 and,

6 WHEREAS The Authority has determined that continued availability of Building 402
7 serves an important role in the provision of support services to residents of Treasure Island
8 and the City and County of San Francisco and is a recreational and community resource for
9 the residents of Treasure Island and the citizens of the City and County of San Francisco
10 and,

11 WHEREAS, Catholic Charities-CYO, TIHDI and the Authority have determined that the
12 under the guidance of TIHDI, the Gymnasium has become so successful and so valuable an
13 asset for the island that it would benefit from the depth of experience available through
14 Catholic Charities; and,

15 WHEREAS, Catholic Charities CYO has agreed to bring its 50+ years of experience in
16 operating recreational programs to the Treasure Island Gymnasium; and,

17 WHEREAS, Catholic Charities is a TIHDI member organization and is therefore
18 exempt from the competitive procedures under (i) the TIDA Rules and Procedures for
19 Transfer and Use of Real Property, and (ii) the TIDA Purchasing Policy and Procedures; and,

20 WHEREAS, Free access to the only public recreational facility on the island serves a
21 significant public purpose; and,

22 WHEREAS, TIHDI lacks sufficient professional resources to operate and maintain the
23 facility; and,
24
25

1 WHEREAS, Under the proposed sublease, Catholic Charities CYO will pay no rent and
2 provide professional services to maintain the Treasure Island Gymnasium for the benefit of
3 the Treasure Island Community and the citizens of San Francisco at no charge to the public;
4 and,

5 WHEREAS, Under a separate agreement between TIDA and Catholic Charities CYO
6 to be approved by this Board, Catholic Charities CYO has agreed to provide recreational
7 services and programming at the Gymnasium at no charge to the public in exchange for
8 \$165,000 in funding from TIDA; now, therefore, be it

9 RESOLVED, that the Board of Directors hereby authorizes the Executive Director to
10 execute a Sublease with Catholic Charities CYO for Catholic Charities CYO to operate and
11 maintain Building 402 in exchange for free rent in substantially the form attached hereto as
12 Exhibit A for a term through June 30, 2006; and

13 BE IT FURTHER RESOLVED, that the Board of Directors authorizes the Executive
14 Director to execute a Professionals Services agreement with Catholic Charities CYO for
15 Catholic Charities CYO to provide recreational services and programs to the Treasure Island
16 community and the citizens of San Francisco in exchange for \$165,000 in substantially the
17 form attached hereto as Exhibit B for a term through June 30, 2006.

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6 CERTIFICATE OF SECRETARY

7 *I hereby certify that I am the duly elected and acting Secretary of the Treasure Island*
8 *Development Authority, a California nonprofit public benefit corporation, and that the above*
9 *Resolution was duly adopted and approved by the Board of Directors of the Authority at a*
10 *properly noticed meeting on June 8, 2005.*

11
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13 _____
14 Susan Po-Rufino, Secretary
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DRAFT SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

CATHOLIC CHARITIES

as Subtenant

For the Sublease of

**Building 497 at Naval Station Treasure Island
San Francisco, California**

July 1, 2005

TREASURE ISLAND SUBLEASE

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LIST OF EXHIBITS:

EXHIBIT A - Master Lease
EXHIBIT B - Drawing of Premises
EXHIBIT C - Seismic Report Cover Page
EXHIBIT D - Rules and Regulations
EXHIBIT E - Utilities
EXHIBIT F - Landscaping
EXHIBIT G - Property Inventory List

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of this first day of July 2005, is by and between the Treasure Island Development Authority, a California nonprofit public benefit corporation ("Sublandlord") and Catholic Charities, a California Non-Profit Corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated April 5, 1999, (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property on Naval Station Treasure Island (the "Property") as more particularly described in the Master Lease, including among other things, Building 497 (the "Building"), together with a non-exclusive right to use certain parking areas adjacent thereto, all as more particularly shown on the map attached hereto as Exhibit B (the "Premises").

B. Subtenant desires to sublet the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. PREMISES

1.1. **Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises, including the improvements thereon and the non-exclusive right to use the parking area shown on Exhibit B.

1.2. As Is Condition of Premises.

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report

referenced in Section 1.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises ("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that the Building and any other structures or improvements located on or about the Premises, may fail structurally and collapse.

2. COMPLIANCE WITH MASTER LEASE

2.1. Incorporation by Reference. All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein

2.2. Conflict. If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

2.3. Compliance with Master Lease. Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

2.4. Automatic Termination. If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

3. TERM

3.1. Term of Sublease. The term of this Sublease (the "Term") shall be on a month-to-month basis, and shall commence on July 1, 2005 (the "Commencement Date") and, may be terminated by either party, for any reason and without liability for such termination, upon thirty (30) days prior written notice to the other Party.

4. RENT

4.1. Base Rent. In consideration of the terms and conditions of that certain Professional Services agreement dated July 1, 2006 by and between Sublandlord and Subtenant, Subtenant shall not be required to pay any Base Rent for the entire term of this Sublease.

4.2. Additional Charges. Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions, expenses, or charges hereunder (together, the "Additional Charges"). The Additional Charges shall hereinafter be referred to as the "Rent". All Additional Charges shall be due and payable immediately on the first day of each month and shall be delinquent if Sublandlord has not received Subtenant's payment on or before the tenth (10th) day

of the month. Subtenant's obligation to pay Rent, including without limitation late charges and default interest, shall survive the termination of this Sublease.

4.3. Late Charge. If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

4.4. Default Interest. If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%), provided however that interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

5. TAXES, ASSESSMENTS AND OTHER EXPENSES

5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Payment Responsibility. Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) No Liens. Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to

delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

5.2. **Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance or services necessary for Subtenant's use.

5.3. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

6. USE; COVENANTS TO PROTECT PREMISES

6.1. **Subtenant's Permitted Use.** Subtenant may use the Premises for a gymnasium and other athletic related purposes..

6.2. **Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.

6.3. **Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. To the best

knowledge of the Mayor's Treasure Island Project Office, there are no existing Additional Easements or other encumbrances which would materially interfere with Subtenant's use of the Premises.

6.4. No Interference with Navy Operations. Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

6.5. No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises.

7. ALTERATIONS

7.1. Alterations. Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.

7.2. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of

Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

7.3. Subtenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

7.4. Sublandlord's Alterations of the Premises and Premises Systems. Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Premises, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for purposes stated herein.

8. REPAIRS AND MAINTENANCE

8.1. Subtenant Responsible for Maintenance and Repair. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

8.2. Utilities. Sublandlord shall provide the basic building utilities and services described in the attached Exhibit E, (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

8.3. Floor Load. Without Sublandlord's prior written consent, which Sublandlord may give or refuse in its sole discretion, Subtenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Premises. If Sublandlord consents to the placement or installation of any such machine or equipment in the Premises, Subtenant at its sole expense shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Sublandlord and otherwise in compliance with Section 7.1 [Alterations] to the extent necessary to assure that no damage to the Premises or weakening of any structural support will be occasioned thereby.

8.4. Janitorial Services. Subtenant shall provide all janitorial services for the Premises.

8.5. Pest Control. Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

8.6. Trash. Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as Exhibit D. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

8.7. No Right to Repair and Deduct. Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof.

9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its

protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

10. COMPLIANCE WITH LAWS

10.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

10.2. Regulatory Approvals.

(a) Responsible Party. Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord and City, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages,

liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

10.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

11. ENCUMBRANCES

11.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

12. DAMAGE OR DESTRUCTION

12.1. Damage or Destruction to the Premises. In the case of damage to or destruction of the Premises by earthquake, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 16 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more than Ten Thousand Dollars (\$10,000) to repair, Subtenant or Landlord may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. Except as specifically provided above, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

12.2. No Abatement in Rent. In the event of any damage or destruction to the Premises,

and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

12.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. ASSIGNMENT AND SUBLETTING

13.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

14. DEFAULT; REMEDIES

14.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within ten (10) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

14.2. Remedies. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

14.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

15.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the consideration and other sums payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant has made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any

statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

15.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises, including without limitation a partial or complete collapse of the Premises due to an earthquake or subsidence, (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Building, (f) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease, or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

16. INSURANCE

16.1. Subtenant's Insurance. Subtenant shall procure and maintain throughout the Term

of this Sublease the following insurance and pay the cost thereof:

(a) **Property Insurance.** Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, the Premises and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than the full replacement value.

(b) **General Liability Insurance.** Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

(c) **Worker's Compensation Insurance.** Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.

(d) **Automobile Liability Insurance.** Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

16.2. General Requirements. All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and the Sublandlord and the Master

Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in Section 20.1.

16.3. Proof of Insurance. Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

16.4. No Limitation on Indemnities. Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

16.5. Lapse of Insurance. Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

16.6. Subtenant's Personal Property. Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

16.7. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or

damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

17. ACCESS BY SUBLANDLORD

17.1. Access to Premises by Sublandlord.

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

17.2. Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

18. SURRENDER

18.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall

surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.2 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

18.2. Security Deposit. Intentionally omitted.

19. HAZARDOUS MATERIALS

19.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord,

which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

19.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice

of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

19.3. Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

20. GENERAL PROVISIONS

20.1. Notices. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord	Treasure Island Development Authority 410 Palm Avenue Treasure Island Phone No.: 415-274-0660 Fax No.: 415-274-0299
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with a copy to:	Office of the City Attorney City Hall, Second Floor 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Attn: Donnell Choy Phone No.: 415-554-4722 Fax No.: 415-554-4755
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Notice Address of Subtenant:	Catholic Charities Brian Cahill, Executive Director 180 Howard St., Suite 100 San Francisco, CA 94105 Phone No.: 415-972-1200 Fax No.: 415-972-1201
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Notice Address of Master Landlord:	Department of the Navy 1220 Pacific Highway San Diego, CA 92132 Attn: Jerry Busch Phone No.: 619-532-0918
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Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice..

20.2. No Implied Waiver. No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment for any sums due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

20.3. Amendments. Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

20.4. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

20.5. Joint and Several Obligations. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities

under this Sublease imposed on Subtenant shall be joint and several.

20.6. Interpretation of Sublease. The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

20.7. Successors and Assigns. Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

20.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

20.9. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

20.10. Governing Law. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

20.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.

20.12. Attorneys' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

20.13. Time of Essence. Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

20.14. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

20.15. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

20.16. Relationship of Parties. Sublandlord is not, and none of the provisions in this

Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

20.17. Recording. Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

20.18. Non-Liability of Indemnified Parties' officials, employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.

20.19. No Discrimination. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

20.20. Counterparts. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20.21. Master Landlord's Consent. This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

21. SPECIAL PROVISIONS

21.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

21.2. Public Transit Information. Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

21.3. Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) Subleases and Other Subcontracts. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC").

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which

such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

21.4. No Relocation Assistance; Waiver of Claims. Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.

21.5. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

21.6. Tropical Hardwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

21.7. Conflicts of Interest. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

21.8. Prevailing Wages for Construction Work. Subtenant agrees that to the extent any person performing labor in the construction of the Alterations required under Section 7 [Alterations] is paid wages for such labor, such person shall be paid not less than the highest prevailing rate of wages and that Subtenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant further agrees that, as to the construction of such improvements under this Sublease, Subtenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through

6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any of the required alterations.

21.9. Prohibition of Tobacco Advertising. Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:

Treasure Island Homeless Development Initiative
a California Nonprofit Corporation

By: _____
Its: _____

SUBLANDLORD:

Treasure Island Development Authority

By: _____
Its: _____

Approved as to Form:

Deputy City Attorney

EXHIBIT A
MASTER LEASE

EXHIBIT B

DIAGRAM OF THE PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

EXHIBIT D
RULES AND REGULATIONS

1. All rules and regulations set out in the Master License shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of Sublandlord.
3. Subtenant's contractors and invitees, while on the Premises or Subtenant's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from Sublandlord and its agents, but will not be an agent or contractor of the Sublandlord or its agents. Subtenant's contractors shall be licensed by the State, insured and bonded at the amount requested by the Sublandlord.
4. Subtenant shall install and maintain at Subtenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises.
5. Subtenant shall be solely responsible for all janitorial and cleaning services, including general maintenance and cleanliness of premises as well as parking lots and landscaped areas adjacent to the Premises.
6. Subtenant shall be responsible for minor repairs and maintenance to the Premises, including minor plumbing, electrical and building repairs. Subtenant shall notify Sublandlord of all conditions requiring repair and all repairs made to premises by Subtenant within 10 days of Subtenant receiving notice of conditions requiring repair.
7. Sublandlord shall be solely responsible for all major capital improvements and repairs to the facilities, including major roof repair.

EXHIBIT E

STANDARD UTILITY SERVICES AND RATES

Subtenant shall not be liable for Utilities

EXHIBIT F
LANDSCAPING SPECIFICATIONS

NOT APPLICABLE

EXHIBIT G

PROPERTY INVENTORY LIST

NOT APPLICABLE

EXHIBIT H

PERMITTED USES

1. Use of Premises open and available to all Residents of the City and County of San Francisco during all hours of operation.
2. Premises shall be used for the following purposes only:
 - a. Customary Gymnasium activities
 - b. Activity Room
 - c. Ancillary Office purposes related to the operation of the gymnasium
 - d. Storage of Equipment and Supplies to support purposes described above.
3. Subtenant shall be responsible for and pay all cost of providing security during the periods that Subtenant occupies the Premises.

City and County of San Francisco
TREASURE ISLAND DEVELOPMENT AUTHORITY
Treasure Island Building One
410 Avenue of the Palms
San Francisco, California 94130

Agreement between the TREASURE ISLAND DEVELOPMENT AUTHORITY and

CATHOLIC CHARITIES CYO

This Agreement is made this first day of July 1, 2005, in the City and County of San Francisco, State of California, by and between: Catholic Charities CYO of the Archdiocese of San Francisco, a California Corporation 180 Howard Street, San Francisco, CA. 94105, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a municipal corporation, hereinafter referred to as "Authority," acting by and through its Executive Director or the Director's designated agent, hereinafter referred to as "Executive Director."

Recitals

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (I) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, the residents of San Francisco have requested recreational facilities on Treasure Island, including a gymnasium; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by the Authority as set forth under this Contract;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("Charter"). Charges will accrue only after prior written authorization certified by the Controller of the City and County of San Francisco ("Controller"), and the amount of the obligation of the Authority or the City and County of San Francisco ("City") hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority and/or City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority and/or City have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority and City budget decisions are subject to the discretion of the City's Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from July 1, 2005 to June 30, 2006.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services ("Programming Services") provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed one hundred sixty five thousand dollars (\$165,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Executive Director as being in accordance with this Agreement. Authority and/or City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

a. The obligation of the Authority and/or City hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority and/or City are not authorized to request, and the Authority and/or City are not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority and/or City are not authorized to offer or promise, nor are the Authority and/or City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by Authority and/or City to Contractor shall be subject to audit by Authority and/or City.

Payment shall be made by Authority and/or City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Authority and/or City for three times the amount of damages which the Authority and/or City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority and/or City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority and/or City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority and/or City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority and/or City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority and/or City; (c) conspires to defraud the Authority and/or City by getting a false claim allowed or paid by the Authority and/or City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority and/or City or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority and/or City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority and/or City within a reasonable time after discovery of the false claim.

9. Left Blank by Agreement of the Parties Disallowance

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority and/or City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority and/or City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority and/or City to enable the Authority and/or City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority and/or City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and/or City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

Authority and/or City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority and/or City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority and/or City, nor be entitled to participate in any plans, arrangements, or distributions by Authority and/or City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation,

insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and/or City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority and/or City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority and/or City do not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should Authority and/or City, in their discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority and/or City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority and/or City, upon notification of such fact by Authority and/or City, Contractor shall promptly remit such amount due or arrange with Authority and/or City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority and/or City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in the financial liability of the Authority and/or City so that Authority and/or City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the Treasure Island Development Authority, the City and County of San Francisco, their Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty days' advance written notice to Authority and/or City of cancellation mailed to the following address:

Treasure Island Development Authority
Treasure Island Building One
410 Avenue of the Palms
San Francisco CA 94130

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority and/or City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority and/or City may, at their sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall do the following: (a) furnish to Authority certificates of insurance; and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority and/or City, in form evidencing all coverages set forth above, and (b) furnish copies of policies promptly upon Authority and/or City request.

h. Approval of the insurance by Authority and/or City shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless Authority and/or City and their officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Authority and/or City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority and/or City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and/or City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority and/or City's costs of investigating any claims against the Authority and/or City.

Notwithstanding the foregoing, if the claim or liability results from an error or omission in the products, results, analyses, opinions, recommendations, directions, designs, or other manifestations of Contractor's professional services, including any other professional act, error or omission that is subject to professional standards of care, the obligation of Contractor hereunder shall only exist to the extent of Contractor's negligence or willful misconduct. In addition to Contractor's obligation to indemnify Authority and City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

In addition to Contractor's obligation to indemnify Authority and/or City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and/or City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and/or City and continues at all times thereafter.

Contractor shall indemnify and hold Authority and/or City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority and/or City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Left Blank by Agreement of the Parties.

18. Liability of Authority and/or City

AUTHORITY AND/OR CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY AND/OR CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. 20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, or 55.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority and/or City to Contractor.

(3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority and/or City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority and/or City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority and/or City on

demand all costs and expenses incurred by Authority and/or City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority and/or City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and/or City and Contractor all damages, losses, costs or expenses incurred by Authority and/or City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. Authority and/or City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority and/or City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and/or City and to minimize the liability of Contractor and Authority and/or City to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority and/or City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority and/or City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At Authority and/or City's direction, assigning to Authority and/or City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority and/or City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to Authority and/or City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that Authority and/or City designates to be completed prior to the date of termination specified by Authority and/or City.

(7) Taking such action as may be necessary, or as the Authority and/or City may direct, for the protection and preservation of any property related to this Agreement which

is in the possession of Contractor and in which Authority and/or City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority and/or City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work Authority and/or City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority and/or City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority and/or City or otherwise disposed of as directed by the Authority and/or City.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority and/or City, and any other appropriate credits to Authority and/or City against the cost of the services or other work.

d. In no event shall Authority and/or City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority and/or City may deduct: (1) all payments previously made by Authority and/or City for work or other services covered by Contractor's final invoice; (2) any claim which Authority and/or City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority and/or City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority and/or

City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority and/or City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 42, 48 through 52, and 56.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority and/or City, and deliver in the manner, at the times, and to the extent, if any, directed by Authority and/or City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority and/or City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and/or City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority and/or City. Contractor agrees that all information disclosed by Authority and/or City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority and/or City: Tony Hall, Executive Director
Treasure Island Development Authority
Treasure Island Building One
410 Avenue of the Palms
San Francisco CA 94130
Fax: (415) 274-0299

To Contractor: Carlos Garcia, Director
Catholic Charities CYO
180 Howard Street #100
San Francisco, CA 94105
Fax: (415) 972-1201

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority and/or City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority and/or City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority and/or City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority and/or City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority and/or City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority and/or City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this

Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority and/or City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority and/or City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority and/or City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such

cure to completion, the Authority and/or City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Minority/Women/Local Business Utilization; Liquidated Damages

a. Compliance

Contractor understands and agrees to comply fully with all provisions of Chapter 12D.A ("Minority/Women/ Local Business Utilization Ordinance--IV") of the San Francisco Administrative Code and agrees to include this paragraph in all subcontracts made in fulfillment of the Contractor's obligations under this Agreement. Said provisions are incorporated herein by reference and made a part of this Agreement as though fully set forth. Contractor's willful failure to comply with Chapter 12D.A is a material breach of contract.

b. Enforcement

If Contractor willfully fails to comply with any of the provisions of Chapter 12D.A, the rules and regulations implementing Chapter 12D.A, or the provisions of this Agreement pertaining to MBE or WBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission (HRC) may also impose other sanctions against Contractor authorized in Chapter 12D.A, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's MBE or WBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to §12D.A.16 (B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with Authority and/or City.

Contractor agrees to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract, and shall make such records available for audit and inspection by HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2 (a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Authority and/or City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in

such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Authority and/or City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between Authority and/or City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in Authority and/or City funds or Authority and/or City -administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority and/or City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be

deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the Authority and/or City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

43. Requiring Minimum Compensation for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Contractor shall increase the hourly gross compensation to \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the City makes the finding required by Section 12P.3 (a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for

violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the Authority and/or City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the Authority and/or City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the Authority and/or City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The Authority and/or City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority and/or City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority and/or City may pursue any of the remedies set forth in this Section against Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority and/or City 's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Authority and/or City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority and/or City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify Authority and/or City when it enters into such a Subcontract and shall certify to the Authority and/or City that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that Authority and/or City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall keep itself informed of the current requirements of the HCAO.

h. Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

i. Contractor shall provide Authority and/or City with access to records pertaining to compliance with HCAO after receiving a written request from Authority and/or City to do so and being provided at least five business days to respond.

j. Authority and/or City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with Authority and/or City when it conducts such audits.

k. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with Authority and/or City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the Authority and/or City to be equal to or greater than \$75,000 in the fiscal year.

45. Left Blank by the Agreement of the Parties.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the Authority and/or City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new Authority and/or City contract for a period of two (2) years.

47. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the

Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Authority to submit to the Authority and/or City any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the San Francisco City Attorney who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Left Blank by Agreement of the Parties.

56. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

AUTHORITY

Recommended by:

Tony Hall, Executive Director
Treasure Island Development Authority

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Carlos Garcia, Director
Catholic Charities CYO
50 Canal Street
San Rafael, CA. 94901
(415) 454.8596
FEIN:

APPENDICES

- A: Services to be Provided by Contractor
- B: Calculation of Charges

Appendix A – Description of Services

Programming Services to be Provided by Contractor

GENERAL RULES AND REGULATIONS

1. All rules and regulations set out in the Sublease between Authority and Contractor shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of Authority.
3. Contractor's contractors and invitees, while on the Premises or Contractor's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from Authority and its agents, but will not be an agent or contractor of the Authority or its agents. Contractor's contractors shall be licensed by the State, insured and bonded at the amount requested by the Authority.
4. Contractor shall install and maintain at Contractor's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises.
5. Contractor shall be solely responsible for all janitorial and cleaning services, including general maintenance and cleanliness of premises as well as parking lots and landscaped areas adjacent to the Premises.
6. Contractor shall be responsible for minor repairs and maintenance to the Premises, including minor plumbing, electrical and building repairs. Contractor shall notify Authority of all conditions requiring repair and all repairs made to premises by Contractor within 10 days of Contractor receiving notice of conditions requiring repair.
7. Authority shall be solely responsible for all major capital improvements and repairs to the facilities, including major roof repair.

PERMITTED USES

1. Use of Premises open and available to all Residents of the City and County of San Francisco during all hours of operation.
2. Contractor must ensure that each person entering the Premises for any purpose including, but not limited to observation or use of facilities or equipment or participation in any program and/or activity at the Premises reads and signs the attached Treasure Island Gymnasium Release and Waiver of Liability and Indemnity Agreement and Sign-in Sheet. For minors, Contractor must obtain the signature of the parent or other legal guardian. Contractor shall retain every original waiver and sign-in sheet in an orderly and secure manner and shall provide copies of these documents to Authority immediately upon request. Upon expiration or earlier termination of this Lease, Contractor shall deliver all original waivers and sign-in sheets to Authority.
3. Contractor contemplates use and operation of the premises in accordance with the following schedule:
 - Tuesdays – 3:00 PM to 9:00 PM
 - Wednesdays – 3:00 PM to 9:00 PM
 - Thursdays – 3:00 PM to 9:00 PM
 - Fridays – 3:00 PM to 9:00 PM
 - Saturdays 12:00 AM to 5:00 PM,Contractor shall notify Authority of any changes to this schedule.

1. Premises shall be used for the following purposes only:
 - a. Customary Gymnasium and Recreational activities
 - b. Activity Room
 - c. Ancillary Office purposes related to the operation of the gymnasium
 - d. Storage of Equipment and Supplies to support purposes described above.
1. Programming Activities may include, but not be limited to:
 - a) Sports and Athletics
 - i) Open gym basketball
 - ii) Open gym volleyball
 - iii) Open gym soccer
 - iv) Racquetball and handball
 - v) Indoor hockey
 - b) Social Recreation
 - i) Game tables
 - ii) Ping Pong tables
 - iii) Foosball table
 - iv) Air Hockey
 - v) Carom tables
 - c) Health and Fitness
 - i) Judo Classes
 - ii) Boot Camp
 - d) Leagues
 - i) Youth Basketball League
 - ii) Adult Basketball League
 - e) Special Events
 - i) Table Tennis Tournament
 - ii) March Madness Basketball Skills Contest
 - iii) Track and Field Event
1. Contractor shall be responsible for and pay all cost of providing security during the periods that Contractor occupies the Premises.

Treasure Island Gymnasium Release and Waiver of Liability and Indemnity Agreement

IN CONSIDERATION of being permitted to utilize the facilities of the Treasure Island Gymnasium ("Gymnasium") for any purpose including, but not limited to observation or use of facilities or equipment or participation in any program and/or activity at the Gymnasium, the undersigned, for himself or herself and any personal representatives, heirs, and next of kin, hereby acknowledges, agrees and represents that he or she has, or immediately upon entering or participating will inspect and carefully consider such premises and facilities and the affiliated program and/or activity. It is further warranted such entry into the Gymnasium for observation or use of any facilities or equipment or participation in such program and/or activity constitutes and acknowledgement that such premises and all facilities and equipment there on and such affiliated program and/or activity has been inspected and carefully considered and that the undersigned finds and accepts same as being safe and reasonably suited for the purpose of such observation, use or participation.

IN FURTHER CONSIDERATION OF BEING PERMITTED TO ENTER THE GYMNASIUM FOR ANY PURPOSE INCLUDING, BUT NOT LIMITED TO OBSERVATION OR USE OF FACILITIES OR EQUIPMENT, OR PARTICIPTION IN ANY PROGRAM AND/OR ACTIVITY AFFILIATED WITH THE GYMNASIUM, THE UNDERSIGNED HEREBY AGREES TO THE FOLLOWING:

1. THE UNDERSIGNED HEREBY RELEASES, WAIVES, DISCHARGES AND COVENANTES NOT TO SUE The Treasure Island Homeless Development Initiative, The Treasure Island Development Authority, The City of San Francisco, The United States of America, any of their officials, officers, employees, and agents (hereinafter referred to as "releases") for all liability to the undersigned, his personal representatives, assignees, heirs and next of kin for any loss or damage, and any claim or demands therefore on account of injury to the person or property or resulting in injury, disability, death of the undersigned, whether caused by the negligence of the releases or otherwise while participating in any program and/or activity affiliated with the Gymnasium.
2. THE UNDERSIGNED HEREBY AGREES TO INDEMNIFY AND SAVE AND HOLD HARMLESS the releases and each of them from any loss, liability, damage or cost they may incur due to the presence of the undersigned in, upon or about the Gymnasium or in any way observing or using the facilities or equipment in the Gymnasium or participating in any activity and/or program affiliated with the Gymnasium whether caused by the negligence of the releases or otherwise.
3. THE UNDERSIGNED HEREBY ASSUMES FULL RESPONSIBILITY FOR AND RISK OF INJURY, DEATH OR PROPERTY DAMAGE due to negligence of releases or otherwise while in, about or upon the premises of the Gymnasium and/or while using the Gymnasium or the facilities or equipment thereon or participating in any program or activity affiliated with the Gymnasium.

THE UNDERSIGNED further expressly agrees that the foregoing RELEASE, WAIVER, AND INDEMNITY AGREEMENT is intended to be as broad and inclusive as is permitted by the laws of the State of California and the City and County of San Francisco and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

THE UNDERSIGNED HAS READ AND VOLUNTARILY SIGNS THE RELEASE AND WAIVER OF LIABILITY AND INDEMNITY AGREEMENT, and further agrees that no oral representations, statements or inducement apart from the foregoing written agreement have been made.

I HAVE READ THIS RELEASE

Date

Signature of Applicant

Print Name

Appendix B

BUDGET – Fiscal Year 2005-2006

One Hundred Sixty Five Thousand Dollars (\$165,000).

This budget represents total annual compensation that shall be paid to Contractor.

Compensation shall be paid in equal monthly installments of Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750.00).

Contractor shall submit an invoice for compensation to the attention of the Executive Director within 10 days of the final day of each month as compensation for the month.

Each invoice shall be accompanied by reports required by Executive Director.

In no event shall any monthly invoice be greater than \$13,750.00, unless agreed to in advance in writing by Executive Director.

Authority shall pay invoice within 30 days of receipt of invoice.

AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Agenda Item No: 8(f)

Meeting Date: June 8, 2005

Subject: Resolution Authorizing the Executive Director to Execute an Amendment to the Contract with Seifel Consulting Inc. to Extend the Term for an Additional 12 Months through June 30, 2006 (Action Item)

Staff Contact: Jack Sylvan, Mayor's Office of Base Reuse and Development
(415) 554-5201

BACKGROUND

On August 14, 2002, the Authority awarded a contract to Seifel Consulting to complete a redevelopment plan for Treasure Island for the not-to-exceed amount of \$129,600. Seifel Consulting has completed several components of the scope of work in the contract, including preparation of a Preliminary Plan and a Preliminary Report. On February 12, 2004, the Authority approved an extension to the term of the contract through June 30, 2004, and on June 9, 2004, the Authority approved extending the contract through June 30, 2005.

During Fall 2003 it was determined that the preparation of the redevelopment plan and related documents should be closely integrated with the land use planning process currently underway. Consequently, the Authority Board was notified that work on the redevelopment plan would be delayed and the master planning schedule for the past year and a half has been based on the premise that the timing for re-engaging in the redevelopment planning process, as well as initiating further CEQA review, will be after the term sheet has been presented to the Citizen's Advisory Board, Treasure Island Development Authority Board and Board of Supervisors. Currently, that is anticipated to occur in late summer of this year. At that time, staff will need to re-engage the services of Seifel Consulting to complete the redevelopment planning process.

The proposed contract extension will allow staff to continue to work with Seifel Consulting during the land planning process and to refine the scope of work necessary to complete the preparation and adoption of a redevelopment plan. This contract amendment does not change the scope of services, budget or any other terms of the contract. Any future amendment to the scope of work or the amount of the contract will be subject to the approval of the Authority Board.

RECOMMENDATION

Staff recommends approval of the contract extension through June 30, 2005.

EXHIBIT

- A Third Amendment to Contract with Seifel Consulting Inc.
- B Original Contract, First and Second Amendments

1 [Amending the contract with Seifel Consulting to Extend Term]

2 **AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A THIRD AMENDMENT**
3 **TO THE CONTRACT WITH SEIFEL CONSULTING INC. TO EXTEND THE TERM OF**
4 **THE CONTRACT FOR CONSULTING SERVICES RELATED TO THE**
5 **ESTABLISHMENT OF A REDEVELOPMENT PROJECT AREA FOR FORMER**
6 **NAVAL STATION TREASURE ISLAND FOR AN ADDITIONAL TWELVE (12)**
7 **MONTHS.**

8 WHEREAS, former Naval Station Treasure Island is a military base located on
9 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently
10 owned by the United States of America ("the Federal Government"); and,

11 WHEREAS, Treasure Island was selected for closure and disposition by the
12 Base Realignment and Closure Commission in 1993, acting under Public Law 101-510,
13 and its subsequent amendments; and,

14 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No.
15 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit
16 public benefit corporation known as the Treasure Island Development Authority (the
17 "Authority") to act as a single entity focused on the planning, redevelopment,
18 reconstruction, rehabilitation, reuse and conversion of the Base for the public interest,
19 convenience, welfare and common benefit of the inhabitants of the City and County of
20 San Francisco; and,

21 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
22 Section 33492.5 of the California Health and Safety Code, and added Section 2.1 to
23 Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i)
24 designated the Authority as a redevelopment agency under California redevelopment
25 law with authority over the Base upon approval of the City's Board of Supervisors, and

1 (ii) with respect to those portions of the Base which are subject to the Tidelands Trust,
2 vested in the Authority the power to administer the public trust for commerce, navigation
3 and fisheries as to such property; and

4 WHEREAS, The Board of Supervisors approved the designation of the Authority
5 as a redevelopment agency for Treasure Island in 1997; and,

6 WHEREAS, The Authority issued a Request for Proposals ("RFP") for consultant
7 services to assist the Authority in the preparation of an Economic Development
8 Conveyance (EDC) Application and the creation and adoption of a redevelopment plan
9 for former naval station Treasure Island on July 15, 1998; and

10 WHEREAS, Seifel Consulting Inc. responded to the RFP as a member of the
11 Sedway Group team to provide redevelopment consulting services; and,

12 WHEREAS, The Authority authorized the executive director to execute a contract
13 with the Sedway team because Sedway was the highest ranked respondent to the RFP;
14 and

15 WHEREAS, The EDC application has been completed as specified in the
16 contract, but the scope of work to complete the Redevelopment Plan was delayed due
17 to delays in the Navy's environmental review process; and,

18 WHEREAS, The Authority authorized the executive director to execute a contract
19 to complete the redevelopment planning process for an amount not-to-exceed
20 \$129,600 with Seifel Consulting on August 14, 2002; and

21 WHEREAS, The Authority approved First and Second amendments to the
22 contract extending the term; and

23 WHEREAS, There is a need to coordinate the redevelopment planning process
24 with the land planning process which is currently underway with the Primary Developer
25 and the development planning schedule anticipates re-engaging the redevelopment

FILE NO. _____

RESOLUTION NO. _____

planning process after a term sheet has been presented to the TI/YBI Citizen's Advisory Board, the Authority Board and the Board of Supervisors; and

WHEREAS, The contract with Seifel Consulting, Inc. will expire on June 30, 2005, and the Authority wishes to extend the contract for an additional twelve (12) months to continue the redevelopment planning process, with no increase in the amount of the contract budget; now therefore be it

RESOLVED, That the Authority hereby authorizes the executive director to amend the contract with Seifel Consulting to extend the term of the contract for an additional twelve (12) months at no additional increase in the total contract amount, to enable Seifel Consulting to complete its work assisting the Authority in the creation and adoption of a redevelopment plan for former naval station Treasure Island.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 8, 2005.

Susan Po Rufino, Secretary

**TREASURE ISLAND DEVELOPMENT AUTHORITY
CITY AND COUNTY OF SAN FRANCISCO**

THIRD AMENDMENT

THIS THIRD AMENDMENT (this "Amendment") is made as of July 1, 2005, in San Francisco, California, by and between Seifel Consulting, Inc. ("Contractor"), and the Treasure Island Development Authority, a municipal corporation ("Authority"), acting by and through its Executive Director ("Executive Director").

RECITALS

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated July 1, 2002 between Contractor and Authority, as amended by a First Amendment dated January 1, 2004 and a Second Amendment dated July 1, 2004.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

(a) **Section 2. Term of the Agreement,** is hereby amended to read as follows:

Subject to Section 1, the term of this Agreement shall be from July 1, 2002 to June 30, 2006.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

AUTHORITY

Recommended by:

Tony Hall, Executive Director
Treasure Island Development Authority

Approved as to form

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Elizabeth Seifel, President
Seifel Consulting Inc.
1388 Sutter Street Suite 520
San Francisco, CA 94109-5452
FEIN: 94-3225313
Vendor No: 32122

**TREASURE ISLAND DEVELOPMENT AUTHORITY
CITY AND COUNTY OF SAN FRANCISCO**

SECOND AMENDMENT

THIS SECOND AMENDMENT (this "Amendment") is made as of July 1, 2004, in San Francisco, California, by and between Seifel Consulting, Inc. ("Contractor"), and the Treasure Island Development Authority, a municipal corporation ("Authority"), acting by and through its Executive Director ("Executive Director").

RECITALS

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated July 1, 2002 between Contractor and Authority, as amended by a First Amendment dated January 1, 2004.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

(a) **Section 2.** Section 2, Term of the Agreement, currently reads as follows:

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from July 1, 2002 to June 30, 2004.

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from July 1, 2002 to June 30, 2005.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

AUTHORITY

Recommended by:

Annemarie Conroy, Executive Director
Treasure Island Development Authority

Approved as to form

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Elizabeth Seifel, President
Seifel Consulting Inc.
1388 Sutter Street Suite 520
San Francisco, CA 94109-5452
FEIN: 94-3225313
Vendor No: 32122

**City and County of San Francisco
TREASURE ISLAND DEVELOPMENT AUTHORITY
Treasure Island Building 1, 410 Palm Avenue
San Francisco, California 94130**

Agreement between the Treasure Island Development Authority and

SEIFEL CONSULTING INC.

This Agreement is made this first day of July 2002, in the City and County of San Francisco, State of California, by and between: Seifel Consulting Inc., hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a municipal corporation, hereinafter referred to as "Authority," acting by and through its Executive Director, hereinafter referred to as "Executive Director."

Recitals

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Authority and/or City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the Authority and/or City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (I) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the Authority and/or City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the Authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, the Authority wishes to secure the services of an independent consultant to prepare the Treasure Island Redevelopment Plan; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by Authority and/or City as set forth under this Contract; and,

WHEREAS, approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4038-02/03 on October 21, 2002;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the Authority and/or City and County of San Francisco ("Charter"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority and/or City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

The Authority and/or City have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority and/or City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from July 1, 2002 through December 31, 2003.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed one hundred thirty thousand dollars (\$130,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Authority as being in accordance with this Agreement. Authority and/or City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority and/or City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

(a) The Authority and/or City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of the Authority and/or City are not authorized to request, and the Authority and/or City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of the Authority and/or City are not authorized to offer or promise, nor is the Authority and/or City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in the form described in Appendix B, Calculation of Charges. All amounts paid by Authority and/or City to Contractor shall be subject to audit by Authority and/or City.

Payment shall be made by Authority and/or City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Authority and/or City for three times the amount of damages which the Authority and/or City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority and/or City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority and/or City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority and/or City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority and/or City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority and/or City; (c) conspires to defraud the Authority and/or City by getting a false claim allowed or paid by the Authority and/or City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority and/or City; or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority and/or City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority and/or City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority and/or City property for private gain. If such a possessory interest is created, then the following shall apply:

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority and/or City to the County Assessor the information required by

Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by the Authority and/or City to enable the Authority and/or City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority and/or City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and/or City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority and/or City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority and/or City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

Authority and/or City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority and/or City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor:** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority and/or City under this Agreement. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as

creating an employment or agency relationship between Authority and/or City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority and/or City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority and/or City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses:** Should Authority and/or City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority and/or City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority and/or City, upon notification of such fact by Authority and/or City, Contractor shall promptly remit such amount due or arrange with Authority and/or City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority and/or City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority and/or City's financial liability so that Authority and/or City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

- (3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the Authority and the City and County of San Francisco, their Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

- c. All policies shall provide thirty days' advance written notice to Authority and/or City of cancellation mailed to the following address:

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority and/or City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority and/or City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must furnish to Authority and/or City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to Authority and/or City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Authority and/or City request.

h. Approval of the insurance by Authority and/or City shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless Authority and/or City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of

of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority and/or City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and/or City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify Authority and/or City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and/or City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and/or City and continues at all times thereafter.

Contractor shall indemnify and hold Authority and/or City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority and/or City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Authority and/or City may have under applicable law.

18. Liability of Authority and/or City

AUTHORITY AND/OR CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY AND/OR CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS. ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

19. Left blank by agreement of the parties

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, or 49.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority and/or City to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority and/or City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority and/or City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority and/or City on demand all costs and expenses incurred by Authority and/or City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority and/or City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and/or City and Contractor all damages, losses, costs or expenses incurred by Authority and/or City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. Authority and/or City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority

and/or City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and/or City and to minimize the liability of Contractor and Authority and/or City to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority and/or City. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority and/or City.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At Authority and/or City's direction, assigning to Authority and/or City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority and/or City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to Authority and/or City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work which Authority and/or City designates to be completed prior to the date of termination specified by Authority and/or City.
- (7) Taking such action as may be necessary, or as the Authority and/or City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority and/or City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority and/or City an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work Authority and/or City directed Contractor to perform prior to the specified termination date, for which services or work Authority and/or City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor

can establish, to the satisfaction of Authority and/or City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority and/or City or otherwise disposed of as directed by the Authority and/or City.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority and/or City, and any other appropriate credits to Authority and/or City against the cost of the services or other work.

d. In no event shall Authority and/or City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority and/or City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority and/or City may deduct: (1) all payments previously made by Authority and/or City for work or other services covered by Contractor's final invoice; (2) any claim which Authority and/or City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority and/or City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority and/or City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority and/or City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9, 10, 11, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, 30, 43, 45 through 48, and 50.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority and/or City, and deliver in the manner, at the times, and to the extent, if any, directed by Authority and/or City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or

partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority and/or City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of Authority and/or City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

24. Proprietary or Confidential Information of Authority and/or City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and/or City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority and/or City. Contractor agrees that all information disclosed by Authority and/or City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority and/or City: Annemarie Conroy, Executive Director

Treasure Island Development Authority
Treasure Island Building One
410 Palm Avenue
San Francisco, CA 94130
FAX: 415-274-0299

To Contractor: Elizabeth Seifel, President
Seifel Consulting Inc.
1388 Sutter Street Suite 520
San Francisco CA 94109-5452

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority and/or City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority and/or City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority and/or City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority and/or City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority and/or City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority and/or City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority and/or City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority and/or City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority and/or City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority and/or City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Minority/Women/Local Business Utilization; Liquidated Damages

a. Compliance

Contractor understands and agrees to comply fully with all provisions of Chapter 12D.A ("Minority/Women/ Local Business Utilization Ordinance-IV") of the San Francisco Administrative Code and agrees to include this paragraph in all subcontracts made in fulfillment of the Contractor's obligations under this Agreement. Said provisions are incorporated herein by reference and made a part of this Agreement as though fully set forth. Contractor's willful failure to comply with Chapter 12D.A is a material breach of contract.

b. Enforcement

If Contractor willfully fails to comply with any of the provisions of Chapter 12D.A, the rules and regulations implementing Chapter 12D.A, or the provisions of this Agreement pertaining to MBE or WBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the Authority and/or City's Human Rights Commission (HRC) may also impose other sanctions against Contractor authorized in Chapter 12D.A, including declaring the Contractor to be irresponsible and ineligible to contract with the Authority and/or City for a period of up to five years or revocation of the Contractor's

MBE or WBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to §12D.A.16C.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Authority and/or City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with Authority and/or City.

Contractor agrees to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, Authority and/or City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Authority and/or City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting Seifel P-500 (7-02)

documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to S.F. Administrative Code §12.F.5, the Authority and/or City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The Authority and/or City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to S.F. Administrative Code §12I.5(b), the Authority and/or City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Authority and/or City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation; Liquidated Damages

Chapter 21A of the S.F. Administrative Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.

In the event Contractor fails to comply in good faith with any of the provisions of Chapter 21A, Contractor will be liable for liquidated damages in an amount equal to Contractor's net profit under this Agreement, or 5% of the total contract amount, whichever is greater. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to Authority

and/or City upon demand and may be offset against any monies due to Contractor from any contract with Authority and/or City.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with S.F. Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between Authority and/or City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in Authority and/or City funds or Authority and/or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority and/or City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Requiring Minimum Compensation for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.ci.sf.ca.us/MCO. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the

requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the Authority and/or City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Contractor shall increase the hourly gross compensation to \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the Authority and/or City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

(b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The Authority and/or City, acting through the Contracting Department, shall determine whether such a breach has occurred.

(d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Authority and/or City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the Authority and/or City

for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the Authority and/or City. Any amounts realized by the Authority and/or City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the AUTHORITY AND/OR CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the MCO, including reports on subcontractors.

(h) The Contractor shall provide the Authority and/or City with access to pertinent records after receiving a written request from the Authority and/or City to do so and being provided at least five (5) business days to respond.

(i) The Authority and/or City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority and/or City from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority and/or City may pursue any of the remedies set forth in this Section against Contractor.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of

a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

43. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at www.ci.sf.ca.us/HCAO. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

(b) Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority and/or City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority and/or City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure

within such period, or thereafter fails diligently to pursue such cure to completion, Authority and/or City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority and/or City.

(d) Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify Authority and/or City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Authority and/or City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that Authority and/or City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

(e) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Authority and/or City with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Contractor shall keep itself informed of the current requirements of the HCAO.

(h) Contractor shall provide reports to the Authority and/or City in accordance with any reporting standards promulgated by the Authority and/or City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Contractor shall provide Authority and/or City with access to records pertaining to compliance with HCAO after receiving a written request from Authority and/or City to do so and being provided at least five business days to respond.

(j) Authority and/or City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with Authority and/or City when it conducts such audits.

(k) If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with Authority and/or City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the Authority and/or City to be equal to or greater than \$75,000 in the fiscal year.

44. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

45. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

46. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

47. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

48. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 44.

49. Compliance with Laws

Contractor shall keep itself fully informed of the Authority and/or City's Charter, codes, ordinances and regulations of the Authority and/or City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

50. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

AUTHORITY AND/OR CITY

Recommended by:


Annamarie Conroy, Executive Director
Treasure Island Development Authority

Approved as to Form:

Dennis Herrera
City Attorney

By 
Deputy City Attorney

Approved:


Judith A. Blackwell
Director, Office of Contract Administration

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the Authority and/or City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.


Elizabeth Seifel, President
Seifel Consulting Inc.
1388 Sutter Street Suite 520
San Francisco CA 94109-5452
FEIN: 94- 322 5313

APPENDICES

- A: Services to be Provided by Contractor
- B: Calculation of Charges

Appendix A

Services to be Provided by Contractor

Overview

This scope of services describes the work that Seifel Consulting Inc. ("Contractor") will perform for the Treasure Island Development Authority. It builds upon CONTRACTOR's prior work for the Authority under the Phase I contract.

As with Phase I, this scope of services is designed to facilitate the redevelopment plan adoption for Treasure Island in accordance with the provisions of the California Community Redevelopment Law (CRL) relating to closing military bases (Section 33492) and not the standard CRL plan adoption process. The CRL authorizes the establishment of a redevelopment project area located within the boundaries of a military base that has been closed pursuant to the actions of the federal Defense Base Closure and Realignment Commission.

The redevelopment plan adoption process is prescribed by the CRL. If any of the mandatory steps in the plan formulation, review, and/or adoption process is overlooked or not completed in compliance with the applicable State statutes, the legality of the plan could be jeopardized, making it susceptible to potential legal challenge(s). Since this could delay implementation of the plan and the timely allocation of tax increment revenues to the Treasure Island Development Authority ("Authority"), it is essential that CONTRACTOR coordinate each step of the plan adoption process with an attorney experienced in military base redevelopment projects. CONTRACTOR has therefore retained McDonough Holland & Allen (MH&A), redevelopment attorneys who have worked with CONTRACTOR on the successful adoption of a redevelopment plan for the Alameda Naval Air Station and on numerous other plan adoption and amendments to assist with the redevelopment plan adoption for Treasure Island. Kitahata & Company has also been retained to provide financial advisory services, as necessary.

In recognition of these considerations, the following scope of services describes the work to be performed and documents to be provided to the Authority. Seifel Consulting Inc. (CONTRACTOR) will serve as prime contractor for the Phase II scope of services. The budget set forth on Exhibit XXX contains cost estimates for each of the tasks outlined in this scope of services. Fees for each task shall not exceed the budget estimate, without prior approval by the Authority.

PHASE II TASK DESCRIPTIONS

Task 1: Update Preliminary Report

Blight Analysis

CONTRACTOR will update the documentation of blight submitted to the Authority in draft form in Spring 2001, using the definitions contained in Section 33492.11 of the CRL for military base redevelopment projects. Chapter 4.5 of the CRL provides that a project area that is a former military base can use Section 33492.11 instead of Section 33031 to define blight. Section 33492.11 permits a broader range of blight findings, and changes the definitions of "blighted area" and "physical conditions that cause blight" applicable to closed military bases, generally resulting in most base closures qualifying as being blighted. The update of the blight analysis is anticipated to include the following tasks: 1) review of photographic documentation included in the Spring 2001 draft, and update to reflect current conditions, as appropriate; 2) incorporate any

additional existing written documentation provided by Authority Staff regarding blighting conditions in the area; 3) incorporate Authority staff comments to Spring 2001 draft, as appropriate. Significant supplemental blight analysis is not anticipated as part of this task and would be billed as additional services, if determined by Authority staff to be required as part of this task.

Preparation of County Fiscal Officer's Report

CONTRACTOR will work with the City and the San Francisco County Auditor-Controller's office to obtain an updated County Fiscal Officer's Report for an estimated FY 2003/04 base year (Section 33328 Report prepared based on the documents provided pursuant to Section 33327.) The County Fiscal Officer's Report establishes the base assessed value of the Project Area and the proportionate distribution of tax increment pass-through payments to the affected taxing entities. The redevelopment plan adoption for Treasure Island is anticipated to occur within a 14 to 16 month time frame, so the base year for the plan would be established by the County Auditor-Controller as FY 2003/04. Since the current fiscal year is now FY 2002/03, this will require the County Auditor to estimate the base year assessed value for FY 2003/04. CONTRACTOR will rely on Authority staff to assist in obtaining this report from the County Auditor-Controller's office.

Proposed Projects and Activities

CONTRACTOR will review and update the proposed redevelopment program and activities submitted to the Authority in draft form in Spring 2001. Where relevant, the program descriptions will be modified, and summary tables containing cost estimates to the Authority will be updated to FY 2003/04 dollars, consistent with the base year for the tax increment projections. This budget estimate assumes no significant changes will be made to the proposed redevelopment program, and only minor modifications to the cost estimates.

Financial Feasibility Analysis

CONTRACTOR will update its multi-year financial model for the project to modify the base year to FY 2003/04, discounting to FY 2003/04 dollars, as well as to reflect revised development assumptions based on the proposed master developer preliminary development concept. CONTRACTOR will update the potential sources and uses of funds for implementation based on the revised estimates. Authority staff and Seifel Consulting will jointly develop the updated schedule of future development and any phasing of implementation activities. The feasibility analysis will form the basis for the Method of Financing section of the Report to the Board of Supervisors on the Redevelopment Plan ("Report on the Redevelopment Plan") discussed below and will include tax increment projections.

Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Authority will be Stephen Proud.

Table 1
Budget - Selfel Consulting
Redevelopment Plan Adoption
Treasure Island

Task Descriptions	Total Budget	Budget			Hours		
		President	Consultants	Support Staff	Principal	Consultants	Graphics/Support Staff
Task 1: Preliminary Report	\$25,320						
Update Physical and Economic Blight Analysis	\$4,320	\$720	\$2,400	\$1,200	4	20	20
Update of County Fiscal Officer's Report	\$780	\$180	\$480	\$120	1	4	2
Update Projects and Activities	\$2,640	\$720	\$1,440	\$480	4	12	8
Update Maps and Exhibits	\$4,500	\$180	\$1,440	\$2,880	1	12	48
Update Methods of Financing Analysis	\$1,320	\$360	\$960	\$0	2	8	0
Update Financial Feasibility Analysis	\$3,120	\$720	\$2,400	\$0	4	20	0
Preparation of Final Draft and Final Report	\$8,640	\$1,440	\$4,800	\$2,400	8	40	40
Task 2: Redevelopment Plan	\$2,880						
Prepare Redevelopment Plan	\$2,880	\$1,440	\$960	\$480	8	8	8
Task 3: Report on the Redevelopment Plan	\$40,920						
Update Preliminary Report Analysis	\$10,880	\$1,080	\$7,200	\$2,400	6	60	40
Implementation Plan	\$13,680	\$2,880	\$9,600	\$1,200	16	80	20
Relocation, Neighborhood Impacts, etc.	\$4,080	\$720	\$2,880	\$480	4	24	8
Preparation of Draft and Final Report	\$12,480	\$2,880	\$4,800	\$4,800	16	40	80
Task 4: Meetings	\$14,640						
Community Meetings (max. 4 @ 4 hrs. per mtg.)	\$4,320	\$2,880	\$1,440	\$0	16	12	0
Commission Briefings (max. 3 @ 4 hrs. per mtg.)	\$3,120	\$2,160	\$960	\$0	12	8	0
Staff Meetings (approx. 8 mtgs. @ 3 hrs. ea.)	\$7,200	\$4,320	\$2,880	\$0	24	24	0
Task 5: General Consultation and Management	\$15,840						
General Consultation Services	\$9,120	\$7,200	\$1,920	\$0	40	16	0
Schedule Management	\$6,720	\$1,440	\$4,800	\$480	8	40	8
Subtotal	\$99,600	\$31,320	\$51,360	\$16,920	174	428	282
Expenses @ 5% of total	\$5,000						
Total Pr.	\$104,600						

Notes: Professional labor budget based on following professional hourly rates:

Rate

President

\$180 /hour

Consultants

Project Manager

\$140 /hour

Senior Consultant

\$120 /hour

Consultant

\$100 /hour

Average Billable Rate for Budget Purposes

\$120 /hour

Data Entry/Graphics/Word Processing

\$60 /hour

Expenses will be billed on a direct reimbursable basis, to the proposed budget.

6596 27225

Table 2
Budget - Entire Consultant Team
Redevelopment Plan Adoption
Treasure Island

Task Descriptions	Total Budget	Seitel Consulting	McDonough Holland & Allen	Kitahata & Company
Task 1: Preliminary Report	\$30,320			
Update Physical and Economic Blight Analysis	\$4,320	\$4,320		
Update of County Fiscal Officers' Report	\$780	\$780		
Update Projects and Activities	\$2,640	\$2,640		
Update Maps and Exhibits	\$4,500	\$4,500		
Update Methods of Financing Analysis	\$1,320	\$1,320		
Update Financial Feasibility Analysis	\$8,120	\$3,120		\$5,000
Preparation of Final Draft and Final Report	\$8,640	\$8,640		
Task 2: Redevelopment Plan	\$10,380			
Prepare Redevelopment Plan	\$10,380	\$2,880	\$7,500	
Task 3: Report on the Redevelopment Plan	\$40,920			
Update Preliminary Report Analysis	\$10,680	\$10,680		
Implementation Plan	\$13,680	\$13,680		
Relocation, Neighborhood Impacts, etc.	\$4,080	\$4,080		
Preparation of Draft and Final Report	\$12,480	\$12,480		
Task 4: Meetings	\$14,640			
Community Meetings (max. 4 @ 4 hrs. per mtg.)	\$4,320	\$4,320		
Commission Briefings (max. 3 @ 4 hrs. per mtg.)	\$3,120	\$3,120		
Staff Meetings (approx. 8 mtgs. @ 3 hrs. ea.)	\$7,200	\$7,200		
Task 5: General Consultation and Management	\$28,340			
General Consultation Services	\$21,620	\$9,120	\$12,500	
Schedule Management	\$6,720	\$6,720		
Labor Subtotal	\$124,600			
Expenses @ 5% of total	\$5,000			
Total Budget	\$129,600	\$104,600	\$20,000	\$5,000

Subcontractor Billing Rates for Key Participants:

McDonough Holland & Allen

Joseph Coomes, Partner

Other Attorneys as needed

Plus: Administrative Fee of 4% for Billings

\$280 /hour
 See Billing Rate Sheet

Kitahata & Company

Gary Kitahata, Principal

\$200 /hour

1 [Election of Officers of the Treasure Island Development Authority.]
2

3 **Resolution Approving the Election of Officers of the Treasure Island Development**
4 **Authority, as Nominated by the Ad Hoc Nomination Committee to Serve for a Twelve**
5 **Month Term Beginning July 1, 2005 and Ending June 30, 2006**
6

7 WHEREAS, Under the TIDA Bylaws, officers of the Board of Directors (the "Board") are
8 to be chosen annually; and,

9 WHEREAS, The TIDA Bylaws allows the Board to create one or more committees
10 consisting of two or more Directors to serve at the pleasure of the Board; and,

11 WHEREAS, At the May 11, 2005 TIDA meeting, the Board adopted a resolution
12 establishing an Ad Hoc Nomination Committee, and 3 members were appointed by the
13 President of the Board to serve as members of the TIDA Ad-Hoc Nomination Committee; and,

14 WHEREAS, This committee met on June 8, 2005 to consider and nominate Officers for
15 the TIDA Board of Directors, and the Ad Hoc Nomination Committee having reported it's
16 nominations to the full TIDA Board for consideration at it's June 8, 2005 regular meeting; now
17 therefore be it

18 RESOLVED, That the Board hereby elects _____ to serve as
19 President and Chair of the TIDA Board, and _____ to serve as Vice-Chair,
20 Secretary and Chief Financial Officer of the TIDA Board for the twelve (12) month period
21 beginning July 1, 2005 and ending on June 30, 2006.
22
23
24
25

1
2 **CERTIFICATE OF SECRETARY**

3 I hereby certify that I am the duly elected Secretary of the Treasure Island
4 Development Authority, a California nonprofit public benefit corporation, and that the
5 above Resolution was duly adopted and approved by the Board of Directors of the
6 Authority at a properly noticed meeting on June 8, 2005.
7
8

9 _____
Susan Po-Rufino, Secretary
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[Approving a 3 Month Extension of the Agency Agreement with the San Francisco
Redevelopment Agency.]

**Approving a Three Month Extension of the Agency Agreement with the San Francisco
Redevelopment Agency for the provision of staff services to the Treasure Island
Development Authority.**

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
corporation known as the Treasure Island Development Authority (the "Authority") to act as a
single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
conversion of former Naval Station Treasure Island (the "Base") for the public interest,
convenience, welfare and common benefit of the inhabitants of the City and County of
San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
Section 33492.5 of the California Health and Safety Code and added Section 2.1 to
Chapter 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the
Authority as a redevelopment agency under California redevelopment law with authority over
the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those
portions of the Base which are subject to the Tidelands Trust, vested in the Authority the
authority to administer the public trust for commerce, navigation and fisheries as to such
property; and,

WHEREAS, The Board of Supervisors approved the designation of the Authority as a
redemption agency with powers over Treasure Island in Resolution No. 43-98, dated
February 6, 1998; and,

WHEREAS, Until August 4, 2004, the Authority had no direct employees, instead
relying on certain City employees (the "Project Office") to provide the staff support necessary

1 for the Authority to fulfill its lawful purposes (the "Services"), pursuant to the terms and
2 conditions of that certain Agency Agreement, by and between the City and the Authority dated
3 February, 1998 (the "City Agency Agreement"); and,

4 WHEREAS, On June 9, 2004, this Board of Directors authorized the termination of the
5 City Agency Agreement and approved an Agency Agreement with the San Francisco
6 Redevelopment Agency (the "SFRA Agency Agreement") for the provision of staff services to
7 the Authority; and,

8 WHEREAS, The SFRA Agency Agreement will expire on June 30, 2005, and by its
9 own terms, the SFRA Agency Agreement cannot be extended without the approval of both the
10 Authority Board of Directors and the Redevelopment Agency Commission; and,

11 WHEREAS, This Board of Directors has determined that it is in the best interests of the
12 Authority to extend the SFRA Agency Agreement for another 3 months under the same terms
13 and conditions of the SFRA Agency Agreement while staff continues to analyze long-term
14 options for the Authority's administrative structure; now therefore, be it,

15 RESOLVED, That the Authority hereby approves a three (3) month extension of the
16 SFRA Agency Agreement under the same terms and conditions of the existing SFRA Agency
17 Agreement and authorizes the Executive Director to execute an amendment to the SFRA
18 Agency Agreement or other appropriate document, approved by the City Attorney, consistent
19 with the intent of this resolution.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 8, 2005.

Susan Po-Rufino, Secretary



AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Agenda Item No. 11

June 08, 2005

Subject: Discussion on the Closure of Treasure Island School.

Staff Contact/Phone: DJ Canepa, Project Manager
(415) 274-0660

BACKGROUND:

The Treasure Island School was constructed in 1968 by the United States Government and used primarily to serve the families of Navy personnel assigned to Naval Station Treasure Island. It is a one-story 56,260 square-foot facility containing six structures. Today, the Treasure Island School serves 333 students, including 117 who live on the island, ranging through grades K-8.

The San Francisco Board of Education has proposed closing the Treasure Island School, citing a budget deficit brought about by increasing costs and declining revenues from the local and state entities. The San Francisco Unified School District has put forward several reasons for the closure; specifically, number of students enrolled versus the capacity of the faculty and the cost of transporting the majority of students from San Francisco to Treasure Island. The San Francisco Unified School District estimates a cost savings \$755,034 should the closure be enacted.

The term of the lease between the Navy and the San Francisco Unified School District is for twenty five years at one dollar over that period of time and is predicated on the site being used for a school. If the SFUSD does decide to close the Treasure Island School, the site would no longer be used for the education of children and the Navy would have the right to terminate the lease.

Exhibit A: Letter from City Attorney concerning School District lease of Treasure Island School facilities



CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA
City Attorney

DONNELL W. CHOY
Deputy City Attorney

DIRECT DIAL: (415) 554-4736
E-MAIL: donnell.choy@sfgov.org

May 31, 2005

Tony Hall
Executive Director
Treasure Island Development Authority
410 Palm Avenue, Bldg. One
Treasure Island
San Francisco, CA 94130

Re: Treasure Island School Site: Lease Between U.S. Navy
and the San Francisco Unified School District



Dear Tony:

At your request, I have reviewed the Agreement of Lease dated August 1, 1966 between the United States of America (the "Navy") and the San Francisco Unified School District (the "District") for the school site on Treasure Island. That lease agreement was amended on September 1, 1968 and again amended on May 1, 1974. Each of the amendments modified the leased premises but not the term of the lease. The lease and the two amendments are collectively referred to as the "Lease."

Article 2 of the Lease states, "The term of this lease shall be for a period of twenty-five (25) years, beginning on the effective date hereof" The effective date of the Lease was August 1, 1966. Therefore, by its own terms, the original term of the Lease expired on August 1, 1991. The fact that the District has remained in possession of the school site and continuously operated it as a school indicates, without more information, that the Navy has consented to the District's continued use and occupancy of the school site under the same terms and conditions of the Lease.

Article 7 of the Lease states that the Lease may be terminated by the Navy in the event that the land ceases to be used by the District for the education of children. If the District closes the Treasure Island school, the site would no longer be used for the education of children, and the Navy would have the right to terminate the Lease.

Very truly yours,

DENNIS J. HERRERA
City Attorney


Donnell W. Choy
Deputy City Attorney





TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND

**Draft Minutes of Meeting
Treasure Island Development Authority
June 8, 2005**

City Hall, Room 400
1 Carlton B. Goodlett Place
San Francisco, CA

1. Call to Order: 1:38 PM

Roll Call Present: Claudine Cheng (Chair)
Susan Po-Rufino (Vice-Chair)
Jesse Blout
John Elberling
Marcia Rosen
Supervisor Chris Daly

Excused: Jared Blumenfeld
Matthew Franklin

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2. Report by Executive Director Tony Hall

- Over the Memorial Day Weekend a ceremony was held on Yerba Buena Island planting trees to commemorate soldiers killed in the wars in Afghanistan and Iraq. The event was very successful and was led by Lieutenant Governor Cruz Bustamante.
- TIDA is working with Glide Memorial Church to establish a specialized vocational training center in the old library on Treasure Island.
- Warner Brothers Productions has informed staff that two television productions looking at Treasure Island have decided to take their productions to Vancouver instead.
- CalTrans has provided the City with various development proposals for the on and off-ramps to Yerba Buena Island from the Bay Bridge
- TIDA newsletter has been received very positively, encouraged Directors to provide articles for future newsletters
- TIDA Budget now rests with the Board of Supervisors; the budget passed the Mayor's Office as recommended by the TIDA Board. Thanked John Farrell for his hard work on the budget

- TIDA staff including himself, Frank Gallagher, Jack Sylvan, Michael Cohen from the Mayors Office and various consultants attended the 2005 NAID national conference in Denver. Held productive talks with US Navy representatives in attendance at the conference.

Mr. John Farrell, TIDA Finance Director, provided information on recommendations made by the Harvey Rose Audit which have already been implemented. 28 recommendations total were made, 17 have been implemented with the remaining 11 to be implemented within 6 months. Provided the Board with a sheet detailing the implementations.

Director Rosen asked for clarification on how the afore-mentioned pending sublease with Glide for vocational training space affected TIHDI's opportunities for job training opportunities. Executive Director Hall stated that Glide contacted TIDA staff directly. He is unaware if the TIHDI opportunities applies to a totally private endeavor but will look into it and report back to the Board.

3. Report by the Mayor's Office of Base Reuse and Development

Mr. Jack Sylvan, Mayor's Office of Base Reuse and Development, provided an update on the Joint EIR certification. There was no appeal to the Board of Supervisors during the 25-day appeal period of the certification so the EIR document will be certified. Stated a public workshop on design principles will be held next Tuesday from 5:30 to 8:00 PM at the Port of San Francisco, Pier 1. This workshop was noticed as a public meeting in order to not limit the amount of Directors or CAB members who wished to attend while complying with Sunshine Ordinance requirements, the structure will not look like a Board meeting. Provided the Board with an updated development timeline. Stated the changes are located on the term sheet schedule, items have been bumped down and staff intends that input received at the public workshop will be wrapped into the design for development which will be presented to the Board and the CAB in July.

Director Po-Rufino asked if the notices were circulated to the various neighborhood organizations beyond the normal TIDA distribution list.

Mr. Sylvan stated that mailing lists were taken from various redevelopment projects which had community workshops and notices have been posted in various locations throughout the Island and an advertisement will be posted in the newspaper this coming weekend.

4. Communications

Communications were received from the Office of the City Attorney, Ms. Dorothy Headley, Treasure Island Community Development & the TI/YBI Citizen Advisory Board, Lt. Governor Cruz Bustamante, the Treasure Island Job Corps Center, Mr. Dennis Thomas and Thunderstar Tours

5. Report by Treasure Island/Yerba Buena Island Citizen Advisory Board

There was no report as the CAB meeting for June was cancelled

6. Ongoing Business by Directors

There was no ongoing business discussed by Directors

7. General Public Comment

Ms. Ruth Gravanis stated that in the May Joint Meeting minutes she referenced herons, not "herrings" as the minutes state. Also discussed a map of natural habitats throughout the City, including those on Yerba Buena Island, which was produced in conjunction with World Environment Day. Urged the Board to consider future contract extensions with Rubicon to include ecosystem restoration on Yerba Buena Island when the funding is available.

8. Consent Agenda

Director Cheng requested Item 8A be removed from the Consent Agenda

Director Rosen requested Item 8E be removed from the Consent Agenda

Director Cheng motioned for approval of the rest of the Consent Agenda

Director Po-Rufino seconded the motion

Consent Agenda Items 8 B, C, D & F were approved unanimously

8A. Director Cheng requested that in Item 8A the minutes of the May 5, 2005 Joint Meeting be amended to reflect her comments agreeing with CAB member Eugene Brodsky and stating the necessity for better and more detailed emergency planning for the Islands while moving forward with the EIR document and redevelopment planning. Currently the minutes do not reflect those comments at all.

Director Rosen requested that Ms. Gravanis comments on the May 5th minutes be incorporated. Also requested that on Page 3 of the regular May meeting her comments be amended to reflect that Director Elberling had repeatedly raised the need for specific planning, not that he had advocated for one outcome or another within the independence issue.

Director Rosen motioned for approval of Item 8A

Director Cheng seconded the motion

There was no public comment on this item

Item 8A was approved unanimously

8E. Director Rosen asked for clarification as this agreement seems to her to be a sole source contract. Stated that she felt exemptions to sole-sourcing were only provided when TIHDI is performing a specific role under its agreement with TIDA. Seems to her this is a service for all Island residents and there would be other providers available for gymnasium programming.

Ms. Sherry Williams, TIHDI Executive Director, stated that economic development opportunities call for a sole-source to TIHDI agencies. Last year when TIHDI contracted to operate the gymnasium it was considered an economic development opportunity. TIHDI underwent an RFP/RFQ process for gym operation and selected the operator this way. There were no other responses besides Catholic Charities/CYO.

City Attorney Choy stated that Section 5 D.I of the TIDA Purchasing Policies and Procedures exempts from competitive process contracts which further the homeless assistance agreement between TIDA and TIHDI.

Director Elberling asked what Catholic Charities does at the gym
Ms. Williams stated there are youth and adult leagues for basketball, volleyball, indoor soccer, social recreation. Plan to start judo and karate as well as soliciting the residents for ideas on other activities. Over 1,000 people use the gym per month.

Director Rosen requested the Board take a further look at gymnasium operation in the coming year to work on better long-term solutions to the issues facing the gym and its operation.

There was no public comment on this item

Director Rosen motioned for approval of this item

Director Blout seconded the motion

Item 8E was approved unanimously

9. Election of Officers of the Treasure Island Development Authority Board of Directors

Commission Secretary Peter Summerville stated that the Ad-Hoc Nomination Committee meeting nominated Claudine Cheng to serve as President, Susan Po-Rufino to serve as Vice President and Secretary and John Elberling as Chief Financial Officer

There was no public comment on this item

Director Rosen motioned for approval based on the recommendations of the Nomination Committee

Director Blout seconded the motion

The nominations were accepted and approved unanimously

10. Approval of a Three Month Extension of the Agency Agreement Between TIDA and the San Francisco Redevelopment Agency

Director Elberling asked what happens after this item is approved.

Frank Gallagher, TIDA Deputy Director, stated that this 3 month extension allows staff time to expand on the options available to TIDA. These options will be before the Board at their August meeting.

Director Cheng asked for preliminary information and discussion at the July meeting as well

Director Elberling asked staff to look into the risk factor and staff workload factor for the different options

There was no public comment on this item

Director Po-Rufino motioned for approval of the item

Director Elberling seconded the motion

The item was approved unanimously

11. Discussion of Proposed Closure of Treasure Island School by the San Francisco Unified School District

Executive Director Hall stated that he has spoken to members of the School Board about the proposed closure of Treasure Island School. Stated keeping the school open is a big issue both for the current residents as well as the future development of the Island. The School Board will take this item up at its June 14th meeting and consider the closure of Treasure Island School.

Mr. DJ Canepa, TIDA staff, recognized School Board Member Jill Wynns presence at the meeting. Stated that Treasure Island School and Presidio Child Development Center are currently slated for closure. TI School serves 333 students in grades K through 8. Navy and SF Unified School District entered into a lease for the TI School originally in 1968. Up until this closure decision in May of 2005 TI School had been slated to become a Dream School for the 2005-2006 school year. Closing the school would produce cost-savings of \$755,000 per year for the School District. Currently the Boys and Girls Club runs an after-school program out of the School. If the school is closed the lease between the Navy and the School District can be terminated if the land leased is no longer used for the education of children. Stated there are three possible options for Treasure Island School: keeping the school open, closing the school, or modifying the school to a K-5 school.

Director Cheng asked if the three options provided were staff ideas or were generated by the School Board.

Mr. Canepa stated that these outcomes were generated by TIDA staff

Ms. Yvette Aldama, TIHDI Community-School Liaison, stated this is a trying and emotional time for everyone involved. Over the past eight months staff and parents had been meeting with School District staff preparing for conversion of the school to a Dream School, then about a month ago word came that TI School was slated for closure. Stated she recognizes that the school district is struggling with choices right now, but wants the Board to be aware of the effect that school closure would have on the community. The school is an anchor for much of the community, especially the families and children that have been traumatized by homelessness in their lives. TIHDI provides support to the school so that the School District can provide support to the children and families at the school. Stated that she appreciates that the School District has come back to the table to consider other options and listen to the community. One option proposed was for the school to become a K-5 school which would serve roughly 77 students.

Ms. Jill Wynns, Member of the San Francisco Board of Education, stated that a member of her staff is here to provide the information and work performed by her staff. Stated that there are some inaccuracies in the information previously provided by the previous speakers. The option of providing a K-5 school on the Island is not an SFUSD idea, the analysis on a K-5 resident-only Island school was done out of deference to Supervisor Chris Daly.

Supervisor Chris Daly stated that it is more than appropriate for school stake-holders to provide their views on the school closure. Stated he did not take the information provided as the official work from the SFUSD. Thanked Ms. Aldama and TIHDI for their work and dedication to the TI School.

Ms. Deborah Simms, SFUSD Chief of School Operations, distributed to the Board a combination of two presentations; one providing background and data on Treasure Island school as well as an overview of what was looked at when considering all possible school closures city-wide and another providing analysis of the proposal for making Treasure Island School a K-5 school. Provided data on Treasure Island School and comparables to other schools city-wide.

Ms. Wynns stated that she cares deeply about Treasure Island School but these are the tough decisions the SFUSD faces in a budget crisis. Stated that if the State was paying its obligations the SFUSD would be getting \$69 million more than they are. Some problems are driven by decline in enrollment as well as increased enrollment in charter schools. Highlighted cuts being made across the board in the School District. Stated that if the school is closed transportation will be provided to Island children to get them to the schools in the City they will be attending. Stated that individual support should be provided to the Treasure Island families and students if necessary.

Director Cheng stated the Board is obviously concerned with the welfare of the children on the Island. Asked if the drop in enrollment was due to reduction of children on the Island when the Navy pulled out or an issue of children choosing to enroll in different schools.

Ms. Simms stated the big drop was due to the closure of the Navy base. Another drop was due to the building of Tenderloin Community School which drew many of the students from the Tenderloin who used to attend Treasure Island School. Stated due to distance issues Treasure Island is usually not people's choice for school, especially now with the open enrollment program.

Director Elberling asked if the Prop A money slated for modernization of TI School would still be expended on modernization of the building should the school be closed.

Ms. Wynns stated it would be delayed. The Prop A bond is restrictive on how the money can be spent. The project would be put to the end of the Prop A list. Some use for the school could be worked out by which the modernization would be beneficial. One potential use for the building on Treasure Island is for charter schools.

Supervisor Daly asked Ms. Wynns if she was offering busing services to all Treasure Island students to the mainland. Stated that there are approximately 200 being bused to the Island now and there would be approximately 400 being bused off the Island if the school closed. Stated this appears to be a doubling of the transportation cost associated with the School.

Ms. Wynns stated that the difference is the buses currently going to Treasure Island pick up kids all over the place whereas the proposed busing to the mainland would be going to only one or two locations.

Supervisor Daly stated that the SFUSD should be honest with themselves that through this process they are knocking almost \$200,000 off their savings.

Director Rosen asked if the closed Ben Franklin Middle School was being used now as a Beacon School.

Ms. Wynns stated that the Beacon will stay in that neighborhood but at a different location.

Director Rosen stated that it is her impression that on Treasure Island the school serves as a sort of Beacon for the community. Stated she is curious if there is the possibility of exploring a joint

community-school district-City way to keep the Beacon community center focus of the school building in some fashion, due to the lack of other community social infrastructure on the Island and deficit of other neighborhood amenities. Asked if any of these options have been explored.

Ms. Wynns stated the SFUSD is interested in looking to do something like this. The SFUSD does not fund the Beacons, that is done by the City. The Department of Children, Youth and Families has contacted the SFUSD and is supportive of the idea as well. Stated the SFUSD is still very supportive of keeping the school as a community resource.

Public Comment

Ms. Sherry Williams, TIHDI Executive Director, thanked the help of DJ Canepa and Supervisor Daly. Stated that this decision was reached a month ago and the community building being done on the Islands is greatly affected by this last minute decision. Stated she feels that it is appropriate for TIDA to weigh in on the school closure and feels it is strange that TIDA was not even consulted by the SFUSD on this decision as it is the caretaking authority for the Island. Many major questions are still left unanswered in the deliberations on this decision that affect both the physical Island as well as the Island community. Stated that TIHDI is dedicated to working with the SFUSD on the K-5 alternative. Encouraged the TIDA Board to weigh in to the School Board.

Ms. Patricia Morillo, Boys and Girls Clubs of San Francisco, stated that the projected savings to the SFUSD by closing TI School is not going to save the School District but the closure of the school will devastate the Island. Thanked Supervisor Daly and Executive Director Hall for their work and support on this issue. Boys and Girls Club will not maintain a presence on the Island if there are not children to serve. The Club is open to the K-5 alternative.

Ms. Ruby Goldberg, Catholic Charities, read a letter from Ms. Mindy Nguyen, an Island resident and Catholic Charities program participant urging the Board to work to keep TI School open. Also stated that the services provided on Treasure Island are centered around the children on the Island. Part of engaging the clients of supportive housing is providing the supportive services which keep them out of homelessness. The reality is the children bring the community together.

Ms. Melanie Williams, Treasure Island resident, stated she was one of the first parents who moved to Treasure Island and has lived on the Island for 6 years. Stated the Island is a safe place for her and her children and she is worried about the effect on her children that the school closure will have.

Ms. Ellie Parson, Walden House, stated there is a 6 to 15 month program on the Island for women parolees. The program centers around job employment, drug rehabilitation and teaching the women to be responsible parents. The program has a hands-on part which teaches the women to parent. The Treasure Island School is a huge part of the program by teaching the parents how to supervise and care about their children coming and going from school and their children's work at school.

Director Rosen left the Board at 3:20 PM

Director Blout stated that he will have to leave the meeting soon. Stated he echoes the sentiment of the other Directors that this is a vital resource for the Island and he looks forward to working with the School District and residents to find a solution to this problem.

Director Elberling stated that the Board will lose its quorum once Director Blout leaves. Asked for a report from the John Stewart Company on the impact on marketing and rental income of the school closure and a report on the long-range plan for the Island and the impact of the school closure on the long-range planning and those assumptions. Stated there are economic issues attached to this proposed closure.

Supervisor Daly suggested the Board direct Mr. Hall to work with the School Board to work to avoid the closure, or in lieu of that to work to mitigate the effect of the closure.

Director Blout suggested staff look more into the Beacon option discussed by Director Rosen. Executive Director Hall stated that staff is working on this issue but only has so much time before the June 14th vote on closure.

Director Elberling stated the Board does not have enough facts. The fiscal impact and long range planning impact is not available at the current time. Stated the impacts on TIDA's responsibilities have to be assessed.

Deputy Director Gallagher suggested that the Board direct staff to write a letter to the SFUSD requesting the vote be delayed until the TIDA Board has had a chance to review the facts and impact.

Director Elberling motioned for a letter to be sent to the SFUSD on behalf of the TIDA Board requesting the closure vote be delayed until the Board has had a chance to analyze the impact on finances, long range planning and on the residents.

Supervisor Daly stated a better way to word the letter may be to state that the Board opposes closing the school before the impacts have been analyzed. Stated he feels a delay will not be granted on the 14th.

Ms. Wynns stated that the SFUSD is required to pass a balanced budget and this issue is part of the budget discussion. Stated that delay on this issue harms the parents of the current students as they would need time to seek enrollment for their kids in other schools.

Executive Director Hall stated that a letter that the Board has discussed can be drafted and submitted to the SFUSD.

Director Elberling motioned for Executive Director Hall to draft a letter to the School Board stating that the TIDA Board opposes closure of the TI School until the Board has had a chance to analyze the impact of school closure on the fiscal, community and long-range planning components of Treasure Island.

Director Blout seconded the motion
The motion was adopted unanimously

12. Discussion of Proposed Rent Credit to Rent Productions LLC

Director Cheng motioned for continuation of Item 12 to the July meeting

Director Elberling seconded the motion

Item 12 was unanimously continued to the July 2005 meeting

13. Discussion of Future Agenda Items by Directors

There were no future agenda items discussed

14. The meeting adjourned at 3:50 PM

Join us for a Community Workshop on Treasure Island's Redevelopment

Sponsored by the Treasure Island/Yerba Buena Island Citizen's Advisory Board, The Treasure Island Development Authority, The Mayor's Office of Base Reuse and Development and Treasure Island Community Development

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Tuesday, June 14, 2005

MAY 24 2005

5:30 PM Registration and Sign In

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6:00-8:00 PM Workshop

Port of San Francisco, Bayside Conference Room

Pier 1, The Embarcadero

San Francisco

05-24-05 P03:40 RCVD

Over the past several years, the CAB, TIDA, Mayor's Office, members of the public, and TIDC have been working on planning for the redevelopment of Treasure Island, translating the goals and objectives outlined in the 1996 Reuse Plan and the broad planning principles of the proposed master plan into more detailed plans. The current plan implements sustainability commitments and envisions a new scale and character for a mix of uses. This public meeting will provide a substantive forum to engage community members in the ongoing discussions and seek suggestions for realizing Treasure Island as a sustainable, pedestrian-friendly, and feasible community and regional destination.

The agenda includes:

- A. An update on the status of the planning process
- B. Workshop discussion of key design issues including intensity of development, heights and character, sustainability, and pedestrian-friendly design concepts
- C. Report back of findings from each of the working groups

This workshop is open to the public, and all interested parties are encouraged to participate.

For further information, please contact:

Jack Sylvan, Mayor's Office of Base Reuse and Development
415-554-5201

NOTICE OF SPECIAL MEETING OF TIDA BOARD OF DIRECTORS AND TI/YBI CITIZEN'S ADVISORY BOARD

The purpose of this meeting is to invite public input on key design issues of the future redevelopment of Treasure Island and Yerba Buena Islands. Members of the Treasure Island Development Authority Board of Directors and TI/YBI Citizen's Advisory Board (CAB) may be in attendance to observe and participate in the meeting at the time and place indicated above. The only items to be discussed at this meeting are those matters listed in this invitation. No action of the Authority Board or TI/YBI CAB will be taken at this meeting. Opportunity for public comment will be provided and encouraged through the process and program of the Community Workshop.



